

MONTANA LEGISLATIVE HISTORY

Chapter 425 19 97

Bill H 122 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) Jan 15 ☒ c

Jan 17 ☒ c

_____ ☐ c

_____ ☐ c

Date Out _____ ☐ c

S. Committee on Judiciary

Hearing Date(s) Feb 05 ☒ c

Feb 07 ☒ c

_____ ☐ c

_____ ☐ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Free Conference Committee
April 14

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

	TRANSMITTED TO SENATE		
1/28	FIRST READING		
1/28	REFERRED TO NATURAL RESOURCES		
2/05	HEARING		
2/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/03	2ND READING CONCURRED	49	0
3/04	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	97	2
4/11	3RD READING CONCURRED AS AMENDED	97	0
4/20	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
4/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 441		
	EFFECTIVE DATE: 10/01/97		

HB 121 INTRODUCED BY SIMPKINS *LC0835 DRAFTER: HEFFELFINGER*

ADJUST THE MONTANA UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM SUPPLEMENTAL EMPLOYER CONTRIBUTION RATE TO AMORTIZE, BY JULY 1, 2033, THE PAST SERVICE LIABILITIES OF THE UNIVERSITY SYSTEM MEMBERS PARTICIPATING IN THE TEACHERS' RETIREMENT SYSTEM

BY REQUEST OF TEACHERS' RETIREMENT BOARD

12/30	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO STATE ADMINISTRATION		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/24	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED		
2/21	2ND READING PASSED	89	9
2/26	3RD READING PASSED	85	14
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO STATE ADMINISTRATION		
3/24	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	50	0
4/05	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	89	11
4/11	3RD READING CONCURRED AS AMENDED	81	15
4/16	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 419		
	EFFECTIVE DATE: 07/01/97		

HB 122 INTRODUCED BY MCGEE *LC0433 DRAFTER: MCCLURE*

REQUIRE A PRISONER IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN

A CIVIL PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE
PRISONER'S TRUST FUND ACCOUNT STATEMENT
BY REQUEST OF DEPARTMENT OF CORRECTIONS

12/30	INTRODUCED		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO JUDICIARY		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/15	HEARING		
1/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/22	2ND READING PASSED	70	29
1/23	3RD READING PASSED	67	29
	TRANSMITTED TO SENATE		
1/24	FIRST READING		
1/24	REFERRED TO JUDICIARY		
2/05	HEARING		
2/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/03	2ND READING CONCURRED	42	7
3/04	3RD READING CONCURRED	42	6
	RETURNED TO HOUSE WITH AMENDMENTS		
3/07	REVISED FISCAL NOTE REQUESTED		
3/10	REFERRED TO JUDICIARY TO CONSIDER SENATE AMENDMENTS		
3/14	COMMITTEE REPORT—RECOMMEND SENATE AMENDMENTS BE REJECTED		
3/14	REVISED FISCAL NOTE RECEIVED		
3/21	REVISED FISCAL NOTE PRINTED		
4/08	2ND READING AMENDMENTS NOT CONCURRED	83	14
4/08	CONFERENCE COMMITTEE APPOINTED		
4/14	CONFERENCE COMMITTEE DISSOLVED		
4/14	FREE CONFERENCE COMMITTEE APPOINTED		
4/16	HEARING		
4/17	HEARING		
4/17	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/19	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	87	9
4/19	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	75	22
	SENATE		
4/09	CONFERENCE COMMITTEE APPOINTED		
4/14	CONFERENCE COMMITTEE DISSOLVED		
4/14	FREE CONFERENCE COMMITTEE APPOINTED		
4/17	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/18	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	46	2
4/19	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	42	6
4/22	SIGNED BY SPEAKER		
4/25	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 475		
	EFFECTIVE DATE: 05/01/97		

HOUSE BILL NO. 122

INTRODUCED BY MCGEE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT; PROVIDING THAT AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS BE SUBJECT TO GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION AND PER DIEM COSTS OF IMPRISONMENT; PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION; CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; AND AMENDING SECTIONS 25-10-404, 37-1-308, 49-2-501, AND 53-9-109, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions -- costs. (1) A person incarcerated in a correctional facility of the department of corrections may not attend a civil proceeding unless the person is:

(a) a respondent in a proceeding to terminate parental rights; or

(b) a party to the civil proceeding and the court determines that the person will be substantially and irreparably prejudiced by not attending the civil proceeding.

(2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the department of corrections to attend a court proceeding without first:

(a) notifying the department and allowing the department 15 days to file a written objection; and

(b) if requested, granting the department an opportunity to appear and present evidence that the person's attendance at the proceeding represents a security risk.

(3) A person who requests that a person in the legal custody of the department of corrections

1 attend a civil proceeding shall pay all costs associated with security.

2
3 **NEW SECTION. Section 2. Report by supervising authority required.** (1) Subsequent to any
4 judgment awarding money damages to a prisoner under the legal custody of the department of corrections,
5 the prisoner's supervising authority shall, upon request of the court, submit a report identifying:

- 6 (a) the total costs incurred by the state or county during the prisoner's incarceration;
7 (b) the criminal sentences imposed upon the prisoner, including:
8 (i) the amount of restitution, if any, ordered in each sentence;
9 (ii) the name and current address of each victim or other person to whom restitution is owed;
10 (iii) the amount of restitution paid by the incarcerated person; and
11 (iv) the amount of restitution currently owed by the incarcerated person for each sentence.

12 (2) The court shall provide a copy of the report to the prisoner, who has 15 days following receipt
13 to file an objection. The court may hold a hearing to consider objections raised by the prisoner.

14 (3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the
15 amount of restitution and repayment for per diem costs owed by the prisoner. The court shall issue an
16 order:

- 17 (a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution
18 and repayment costs; and
19 (b) ordering the party owing money damages to the prisoner to pay an amount equal to the
20 restitution owed by the prisoner to the crime victims compensation and assistance account established in
21 53-9-109 and to pay per diem costs owed by the prisoner. All restitution owned by the prisoner must be
22 paid prior to payment of any per diem costs.

23
24 **Section 3.** Section 25-10-404, MCA, is amended to read:

25 **"25-10-404. Poor persons not required to prepay fees -- definition.** (1) Except as provided in
26 ~~subsection~~ subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported
27 by a financial statement, stating that the person has a good cause of action or defense and is unable to pay
28 the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~
29 subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a
30 request for waiver of fees, the person may commence and prosecute or defend an action in any of the

1 courts and administrative tribunals of this state and the officers of the courts and administrative tribunals
2 shall issue and serve all writs and perform all services in the action without demanding or receiving their
3 fees in advance.

4 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request
5 for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval.
6 If the request is subsequently denied, the fees must be paid before the case may proceed further.

7 (3) A person represented by an entity that provides free legal services to indigent persons is not
8 required to file the financial statement required by subsection (1).

9 (4) The department of justice shall, by rule, prescribe the form of the financial statement required
10 by subsection (1) for use in determining indigence. The form may require the disclosure of income and
11 assets, including but not limited to the ownership of real and personal property, cash, and savings.

12 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals
13 a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition
14 to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account
15 statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately
16 preceding any filing.

17 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil
18 complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a
19 prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of
20 any fees required by law when funds exist. The court shall consider the indigence policy of the department
21 when determining whether funds exist.

22 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or
23 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall
24 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by
25 the court.

26 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or
27 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial
28 release, or a diversionary program and who is subject to incarceration, detention, or admission to any
29 facility."
30

1 **Section 4.** Section 37-1-308, MCA, is amended to read:

2 **"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception.** (1) A
3 person, government, or private entity may submit a written complaint to the department charging a licensee
4 or license applicant with a violation of this part and specifying the grounds for the complaint.

5 (2) If the department receives a written complaint or otherwise obtains information that a licensee
6 or license applicant may have committed a violation of this part, the department may, with the concurrence
7 of a member of the screening panel established in 37-1-307, investigate to determine whether there is
8 reasonable cause to believe that the licensee or license applicant has committed the violation. A person or
9 private entity, but not a government entity, filing a complaint under this section in good faith is immune
10 from suit in a civil action related to the filing or contents of the complaint.

11 (3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated."

12
13 **Section 5.** Section 49-2-501, MCA, is amended to read:

14 **"49-2-501. Filing complaints -- exception.** (1) A complaint may be filed by or on behalf of any
15 person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint
16 must be in the form of a written, verified complaint stating the name and address of the person, and the
17 educational institution, financial institution, or governmental entity or agency alleged to have engaged in
18 the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff
19 may file a complaint in like manner when a discriminatory practice comes to its attention.

20 (2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this
21 chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory
22 practice occurred or was discovered.

23 (b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing
24 a grievance in accordance with any grievance procedure established by a collective bargaining agreement,
25 contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the
26 grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful
27 discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within
28 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice
29 occurred or was discovered.

30 (c) Any complaint not filed within the times set forth ~~herein~~ in this subsection (2) may not be

1 considered by the commission.

2 (3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated."

3
4 **Section 6.** Section 53-9-109, MCA, is amended to read:

5 **"53-9-109. Crime victims compensation and assistance account.** (1) There is a crime victims
6 compensation and assistance account in the state special revenue fund. There must be paid into this
7 account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses
8 involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result
9 of citations or tickets issued by the highway patrol. Except as provided in ~~subsection~~ subsections (2) and
10 (3), the money in the account must be used solely for the purposes of this part and for victims' assistance
11 program coordination and planning provided by the division.

12 (2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever
13 the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000
14 must be deposited in the general fund. (See compiler's comments for contingent termination of certain
15 text.)

16 (3) Funds deposited into the account pursuant to [section 2] must be distributed to a victim or
17 person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified
18 victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person.
19 If a qualified victim or person cannot be located, that victim's or person's share of restitution must be
20 retained in the account."

21
22 **NEW SECTION. Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as
23 an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to
24 [sections 1].

25 (2) [Section 2] is intended to be codified as an integral part of Title 25, chapter 10, and the
26 provisions of Title 25, chapter 10, apply to [section 2].

27 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0122, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

bill for an act requiring a prisoner in the legal custody of the Department of Corrections to either pay a filing fee to file a complaint in a civil proceeding or submit a certified copy of the prisoner's trust fund account statement; providing that an award of money damages received by a prisoner who was injured while under the supervision of the Department of Corrections be subject to garnishment for payment of victim restitution and per diem costs of imprisonment; prohibiting prisoners from filing complaints with the Department of Commerce against professional license holders or with the Human Rights Commission; clarifying the use of and providing limitations on the issuance of writs of habeas corpus for inmates to testify in civil proceedings.

SUMPTIONS:

This bill will reduce the cost of transporting inmates to court proceedings. Currently, there are approximately 30 court proceedings per year where an inmate has to be transported. The Department of Corrections (DOC) assumes that 50% of these trips could be avoided under this bill. However, there will be no corresponding cost savings because the correctional officers would be performing other regular duties in lieu of transporting inmates. This bill will increase safety to the facility and the public at large by reducing the number of inmates who must be supervised outside correctional facilities.

New Section 3 of this bill will allow the DOC to recoup costs of incarceration from inmates who are awarded judgments. Two inmates have been awarded judgments in the last 6 years for a total of \$9,259. The DOC assumes that it will recoup costs from one award to an inmate in the 1999 biennium.

This bill will eliminate complaints filed by inmates against professionals. Over the past two years, there have been approximately 10 complaints filed by inmates. These complaints usually are filed against contracted medical personnel. Each complaint requires 1 day of work by the professional to respond to the complaint. The average hourly salary of DOC contracted medical professionals is \$60. This will be a savings of \$2,400 per year.

This bill will also eliminate the number of Human Rights complaints filed by inmates. There are approximately 7 of these filed per year. There would be no fiscal savings to the DOC by eliminating these complaints. However, DOC legal and professional personnel would spend less time responding to frivolous complaints. Also, the backlog of work at the Human Rights Commission would be reduced. This bill has no impact on the Department of Administration.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
incarceration cost abatement	(4,630)	0
Contracted Services	<u>(2,400)</u>	<u>(2,400)</u>
Total	(7,030)	(2,400)
<u>Funding:</u>		
General Fund (01)	(7,030)	(2,400)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Savings generated by this bill will continue into future years.

Dane Lewis 1-12-97
 DANE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Dan McGee 1/4/97
 DAN MCGEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0122, as introduced

HB 122

HOUSE JUDICIARY

Page 2

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - - - - - REREFERRED - - - - - DATE READ						
HB0098	CLARK, ROBERT		ELIMINATE HANGING AS MEANS OF EXECUTION			
	1/06	1/17		PASS AS AMENDED	01/21 VOTE: 13-8	1/21
HB0111	AHNER, CHRIS		REVISE VIOLENT OFFENDER AND SEXUAL OFFENDER REGISTRATION LAW			
	1/07	1/14		PASS AS AMENDED	01/22 VOTE: 14-5	1/25
HB0122	MC GEE, DANIEL		REQUIRE PAYMENT OF FILING FEES PRIOR TO CIVIL ACTION BY PRISONERS			
	1/06	1/15		PASS AS AMENDED	01/17 VOTE: 15-5	1/20
HB0122	MC GEE, DANIEL		REQUIRE PAYMENT OF FILING FEES PRIOR TO CIVIL ACTION BY PRISONERS			
	3/10			COM RPT - 03/14	VOTE:10-6	3/14
HB0127	JOHNSON, JOHN		REVISE POSTCONVICTION RELIEF LAWS IN DEATH PENALTY CASES			
	1/23	2/05		TABLED ON	02/05 VOTE: 20-0	
HB0135	SMITH, LIZ		REVISE MEDICAL PAROLE AND STAGGER TERMS OF MEMBERS OF BD. OF PARDONS & PAROL			
	1/07	1/13		PASS AS AMENDED	01/20 VOTE: 18-0	1/20
HB0137	SMITH, LIZ		NO INQUEST FOR PRISONER DEAD FROM DEATH SENTENCE OR TERMINAL CONDITION			
	1/06	1/13	1/20/97 Tabled 16-2	PASS AS AMENDED	01/24 VOTE: 11-7	1/25
HB0141	KEENAN, BOB		REVISE ADMINISTRATIVE PROVISIONS CONCERNING SUPREME COURT			
	1/06	1/13		DO PASS	01/15 VOTE: 20-0	1/16
HB0159	BARNHART, BEVERLY		ALLOW DPHHS TO INITIATE CHILD CARE REMEDY IN JUSTICE,CITY,MUNI.OR DIST.COURT			
	1/06	1/17	1/29/97 Tabled 14-2	DO PASS	02/20 VOTE: 14-6	2/20
HB0163	JOHNSON, JOHN		REVISE ADOPTION LAWS			
	1/06	1/24	2/10/97 Tabled 19-1	PASS AS AMENDED	03/25 VOTE: 15-4	3/25
HB0168	JOHNSON, ROYAL		GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS			
	1/06	1/21		PASS AS AMENDED	01/24 VOTE: 14-5	1/25
HB0187	WALTERS, ALLEN		PENALTY WHEN ADULT LETS CHILD USE GUN AND DEATH OR BODILY INJURY OCCURS			
	1/08	1/30		TABLED ON	02/05 VOTE: 18-0	

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 15, 1997, at
8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 24, HB 68, HB 122; POSTED
1/8/97
Executive Action: HB 141, DO PASS

HEARING ON HB 68

Sponsor: REP. DANIEL MC GEE

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Count: 3.0 - 6.4; Comments: This
is a 60-minute tape.}

Proponents:

RICK DAY, Director, Department of Corrections - EXHIBITS 1 and 2
{Tape: 1; Side: A; Approx. Time Count: 6.5 - 11.4}

RON WATERMAN, Attorney
{Tape: 1; Side: A; Approx. Time Count: 11.6 - 15.6; Comments:
Supported with reservations.}

Opponents:

RUSSELL HILL, Montana Trial Lawyers - EXHIBIT 3
{Tape: 1; Side: A; Approx. Time Count: 15.9 - 22.1}

SCOTT CRICHTON, ACLU
{Tape: 1; Side: A; Approx. Time Count: 22.3 - 24.5}

MIKE COK, Attorney
{Tape: 1; Side: A; Approx. Time Count: 24.7 - Tape 1; Side B;
12.3; Comments: Referenced Judge Mizner's summary judgment.}

ED SHEEHY, Jr., Attorney
{Tape: 1; Side: B; Approx. Time Count: 12.6 - 19.4}

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 19.7 - Tape 2; Side A;
8.8; Comments: This is a 90-minute tape.}

EXHIBIT 4
{Tape: 2; Side: A; Approx. Time Count: 8.9 - 16.4; Comments: Mr.
Hill, at the request of Rep. Kottel, proposed an amendment.}

EXHIBIT 5
{Tape: 2; Side: A; Approx. Time Count: 21.5 - 24.1; Comments: Rep.
Sands requested a report from Mr. Crichton which was delivered at
a later date and is included as Exhibit 5.}

{Tape: 2; Side: A; Approx. Time Count: 24.2 - Tape: 2; Side B;
8.0; Comments: Questions continued from the committee.}

Closing by Sponsor: REPRESENTATIVE MC GEE

{Tape: 2; Side: b; Approx. Time Count: 8.1 - 14.1}

HEARING ON HB 122

Sponsor: REP. DANIEL MC GEE

Opening Statement by Sponsor: EXHIBIT 6

{Tape: 2; Side: B; Approx. Time Count: 16.2 - 22.7}

Proponents:

DAVE OHLER, Department of Corrections - EXHIBIT 7
{Tape: 2; Side: B; Approx. Time Count: 22.9 - 27.8}

Opponents:

SCOTT CRICHTON, ACLU - EXHIBIT 8

{Tape: 2; Side: B; Approx. Time Count: 28.0 - 32.8}

SCOTT WOOSTER, ACLU

{Tape: 2; Side: B; Approx. Time Count: 32.9 - Tape 3; Side A; 9.0}

Questions From Committee Members and Responses:

{Tape: 3; Side: A; Approx. Time Count: 10.0 - 20.2}

Closing by Sponsor: REPRESENTATIVE MC GEE

{Tape: 3; Side: A; Approx. Time Count: 20.3 - 24.3}

HEARING ON HB 24

Sponsor: REP. ANTOINETTE HAGENER

Opening Statement by Sponsor:

{Tape: 3; Side: A; Approx. Time Count: 24.8 - 28.1}

Proponents:

ALVE THOMAS, AARP

{Tape: 3; Side: A; Approx. Time Count: 28.4 - 29.1}

EVELYN HARSKJOLD, HILL COUNTY AGING SERVICES DIRECTOR

{Tape: 3; Side: A; Approx. Time Count: 29.2 - Tape 3; Side B; 0.6}

JOHN SHONTZ, MONTANA ASSOCIATION OF REALTORS - EXHIBIT 9

{Tape: 3; Side: B; Approx. Time Count: 0.7 - 2.6}

Questions From Committee Members and Responses:

{Tape: 3; Side: B; Approx. Time Count: 2.8 - 11.7}

Closing by Sponsor: REPRESENTATIVE HAGENER

{Tape: 3; Side: B; Approx. Time Count: 11.9 - 12.2}

EXECUTIVE ACTION ON HB 141

Motion/Vote: REPRESENTATIVE MC GEE moved HB 141 DO PASS. Motion carried by unanimous vote.

AMENDMENT TO HOUSE BILL 122

AMENDING HB 122 AS INTRODUCED

AMENDMENT BY SPONSOR: REP. DAN MCGEE

1. Page 2, line 12.
Insert: "(c) the amount of child support owed by the prisoner."
2. Page 2, line 15.
Following: "restitution"
Insert: ", child support"
3. Page 2, line 17.
Following: "restitution"
Insert: ", child support"
4. Page 2, line 21.
Following: "53-9-109"
Insert: ", to pay the outstanding child support payment to the department of public health and human services for disbursement to the obligee"
5. Page 2, line 22.
Following: "any"
Insert: "child support payments. All child support owed by the prisoner must be paid prior to payment of any"
6. Page 4, line 11.
Following: "is incarcerated"
Insert: "as the result of a conviction for a criminal offense"
7. Page 5, line 2.
Following: "is incarcerated"
Insert: "as the result of a conviction for a criminal offense"

8. Title, line 10.
Following: "RESTITUTION"
Insert: ", CHILD SUPPORT"
9. NEW SECTION. **Section 8. Retroactive applicability.** [Sections 2, 4, and 5] apply retroactively, within the meaning of 1-2-109, to causes of action or judgments which occurred after January 1, 1990.
10. NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- END -

**Powell County Memorial Hospital**

1101 Texas Avenue • Deer Lodge, Montana 59722
Phone (406) 846-2212 • FAX (406) 846-3074

EXHIBIT 7
DATE 1/15/97
HB 122

January 14, 1997

Mr. Dave Ohler
Department of Corrections
P.O. Box 201301
Helena, MT 59620-1301

RE: HB122

Dear Mr. Ohler:

I would like to take this opportunity to give Powell County Memorial Hospital's (PCMH) support of HB122. As you well know, PCMH currently provides a variety of services to Montana State Prison. Our current contracts include infirmity unit management, mid-level providers services, and primary care physician services.

The potential liability of practicing medicine at Montana State Prison has been and remains a significant issue with our employed physicians, mid-level providers, and the hospital. Since 1994 when we began providing physician coverage at MSP, we have had several frivolous lawsuits from MSP inmates. In every instance the provider has won the case. Unfortunately, each complaint is filed with the Board of Medical Examiners and is eventually filed with the National Practitioners Data Bank. Even though the suit is found to be without merit, each of these cases cause a "black mark" on a physicians malpractice record.

The ability of inmates to file cases without economic recourse has multiple effects on the medical care that we provide. First, the physicians tend to practice in a more defensive posture than in their community practice. Thus, increasing the cost of medical care that the State of Montana ultimately provides. Secondly, it significantly increases the difficulty in recruiting high quality providers that are willing to provide care at MSP.

Based upon these issues Powell County Memorial Hospital strongly supports HB122. Please feel free to contact me if you have any questions or comments.

Respectfully,


Tony L. Stoff,
Chief Executive Officer



EXHIBIT 8
DATE 1/15/97
HB 122

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

January 15, 1997

Mister Chairman, members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana.

There are a number of problems with HB 122 as it is currently drafted.

1. The new section on prisoner attendance at civil proceedings requires a number of technical adjustments.

A. Section 1(1)(b) focuses on whether the prospective inmate attendee will be prejudiced, rather than whether the parties in the suit will be compromised in prosecuting or defending their case. What one might envision is an inmate-plaintiff who wishes to call another inmate as a witness in his civil suit against the DOC. As the bill is written, the court could order the attendance of the witness only if it determined that the witnesses's interest would be otherwise compromised.

In addition, this bill has no allowance for video conferencing for certain attendees who might not be able to be there in person.

B. The mandatory 15 day response period to a writ of habeas corpus is unworkable (Section 1(2)(a)). It would eliminate inmate attendance at emergency proceedings, including TRO hearings.

C. Section 1(3)'s provisions must be examined and should include an exception for inmates on IFP status.

2. The restitution requirement also has problems. It is my understanding that the sentencing court has the authority under state law to order restitution as part of the

criminal penalty given to a defendant. If that is so, then there may be an ex post facto problem with assessing restitution fines against an inmate who has won a money judgement against the state, but who is not required to pay restitution as part of his underlying sentence.

3. Amended 37-1-308 is not necessary. The provision as it exists vests the licensing board with the discretion to investigate complaints. The board should be trusted to exercise its discretion appropriately. Also, by categorically excepting inmate complaints, the board is essentially losing its authority to ensure that medical staff is performing its duties within acceptable professional bounds, and in conforming with its licensure. Board action to discipline prison personnel is certainly a less costly and time consuming alternative to litigation.

4. Amending 49-2-501 raises the same or similar problems as 37-1-308. The human rights commission has the discretion to put forward resources toward an investigation of a complaint, thus providing a good way for an administrative remedy and alternative to more expensive litigation. Closing off this avenue may well just increase pressures for court proceedings.

To close, we oppose the bill as written and would find the bill less onerous if the concerns we have raised are addressed.

Thank you for you time and consideration.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 1/15/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 1/15/97

BILL NO. HB 122

SPONSOR(S) Rep. Daniel McGee

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Dave Ohler	Dept of Corrections	✓	
Scott Crichton	ACLU		✓
Ed Shealy	Self		✓
Anne MacTavish	Human Rights Comm		
Scott Wurster	Self / ACLU		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:vissbcom.man

CS-14

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 17, 1997, at
8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Absent: Rep. Diane Sands

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 98, HB 159, POSTED 1/8/97
Executive Action:	HB 24, DO PASS
	HB 40, DO PASS AS AMENDED
	HB 65, DO PASS AS AMENDED
	HB 122, DO PASS AS AMENDED

Motion: REP. BOHARSKI moved HB 65 DO PASS AS AMENDED.
{Tape: 3; Side: A; Approx. Time Count: 26.1 - 26.4}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 26.5 - 27.5}

Vote: The motion carried by unanimous vote.
{Tape: 3; Side: A; Approx. Time Count: 28.0 - 28.4}

EXECUTIVE ACTION ON HB 24

Motion: REP. ANDERSON MOVED HB 24 DO PASS.
{Tape: 3; Side: B; Approx. Time Count: 0.1 - 0.8}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 0.9 - 1.7}

Vote: The motion carried, 19 - 1, REP. BOHARSKI voted no.

EXECUTIVE ACTION ON HB 122

Motion: REP. DAN MC GEE moved HB 122 DO PASS.
{Tape: 3; Side: B; Approx. Time Count: 2.5 - 2.9}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 3.0 - 12.2}

Motion/Vote: REP. MC GEE moved to amend HB 122. The motion carried 17 - 1, REP. WYATT voted no.
{Tape: 3; Side: B; Approx. Time Count: 13.3; Comments: One representative had left the room and did not vote.}

Motion: REP. MC GEE moved HB 122 DO PASS AS AMENDED.

Motion: REP. KOTTEL moved to amend HB 122 by striking section 1.
{Tape: 3; Side: B; Approx. Time Count: 13.9 - 17.2; Comments: This amendment was later withdrawn as indicated below.}

{Tape: 3; Side: B; Approx. Time Count: 17.3 - 20.9; Comments: Rep. Anderson proposed a substitute amendment and Rep. Kottel withdrew her amendment.}

Motion: REP. MC GEE moved a substitute amendment.
{Tape: 3; Side: B; Approx. Time Count: 21.0}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 21.4 - 23.6}

Vote: The motion on the substitute amendment carried 17 - 1.

Motion: REP. BOHARSKI moved HB 122 DO PASS AS AMENDED.
{Tape: 3; Side: B; Approx. Time Count: 24.3}

Discussion:

{Tape: 3; Side: B; Approx. Time Count: 24.4 - Tape 4; Side A; 3.4}

Motion/Vote: REP. MC GEE moved amendments 10 and 12 to HB 122. The motion carried 19 - 1, REP. HURDLE voting no.
{Tape: 4; Side: A; Approx. Time Count: 5.9}

Motion: REP. MC GEE moved HB 122 DO PASS AS AMENDED.
{Tape: 4; Side: A; Comments: Discussion and action occurred too rapidly to note time.}

Discussion:
{Tape: 4; Side: A; Comments: Discussion and action occurred too quickly to note tape counter.}

Motion/Vote: REP. BOHARSKI moved to amend page 4, line 16 to strike "and the" and insert a comma. The motion carried by unanimous vote.
{Tape: 4; Side: A; Comments: Discussion and action occurred too quickly to note time.}

Motion: REP. BOHARSKI moved HB 122 DO PASS AS AMENDED.
{Tape: 4; Side: A; Approx. Time Count: 9.2 - 9.3}

Discussion:
{Tape: 4; Side: A; Approx. Time Count: 9.6 - 13.3}

Vote: The motion carried to pass HB 122 as amended 15 - 5, REPS. WYATT, SANDS, MC CULLOCH, HURDLE and ELLINGSON voting no.

EXECUTIVE ACTION ON HB 40

Motion: REP. JON ELLINGSON moved HB 40 DO PASS.
{Tape: 4; Side: A; Approx. Time Count: 17.0}

Motion/Vote: REP. BOHARSKI moved to amend HB 40 to include a sunset clause of two more years. The motion carried 14 - 6, REPS. WYATT, SANDS, ELLINGSON and HURDLE voting no.
{Tape: 4; Side: A; Comments: Action occurred too quickly to note time.}

Motion: REP. AHNER moved HB 40 DO PASS AS AMENDED.
{Tape: 4; Side: A; Approx. Time Count: 18.9}

Motion: REP. MOLNAR moved to amend HB 40.

Discussion:
{Tape: 4; Side: A; Approx. Time Count: 19.1 - 19.9}

Vote: The motion failed by voice vote.

Motion/Vote: REP. MC GEE moved HB 40 DO PASS AS AMENDED. The motion carried by unanimous vote.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 1/17/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS		✓	
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		



HOUSE STANDING COMMITTEE REPORT

January 20, 1997

Page 1 of 3

Mr. Speaker: We, the committee on Judiciary report that House Bill 122 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 10.
Following: "RESTITUTION"
Insert: ", CHILD SUPPORT,"

2. Title, line 14.
Following: "PROCEEDINGS;"
Strike: "AND"

3. Title, line 15.
Following: "MCA"
Insert: "; AND PROVIDING A RETROACTIVE APPLICABILITY DATE"

4. Page 1, line 21.
Following: "proceeding"
Insert: "in which the person is a party"
Strike: "the person is"

5. Page 1, line 22.
Following: "(a)"
Insert: "the person is"

6. Page 1, line 23.
Strike: "a party to the civil proceeding and"
Strike: "the person"
Insert: "a party"

Committee Vote:
Yes 5, No 5.

1/20 12
ump
131125SSC.Hgd

7. Page 2, line 11.

Strike: "."

Insert: ";"

8. Page 2.

Following: line 11.

Insert: "(c) the amount of any child support owed by the
prisoner."

9. Page 2, lines 15 and 17.

Following: "restitution" on each line

Insert: ", child support,"

10. Page 2, line 21.

Following: "53-9-109"

Insert: ", to pay any outstanding child support payments to the
department of public health and human services for
disbursement to the obligee,"

Strike: "owned"

Insert: "owed"

11. Page 2, line 22.

Following: "any"

Insert: "child support payments. All child support owed by the
prisoner must be paid prior to the payment of any"

12. Page 3, lines 27 and 28.

Strike: "pretrial" on line 27 through "release," on line 28

13. Page 4, line 11.

Page 5, line 2.

Following: "incarcerated"

Insert: "as a result of a conviction for a criminal offense"

14. Page 4, line 16.

Strike: "and the"

Insert: ", "

15. Page 5.

Following: line 26.

Insert: "NEW SECTION. Section 8. Severability. If a part of
[this act] is invalid, all valid parts that are severable
from the invalid part remain in effect. If a part of [this
act] is invalid in one or more of its applications, the part
remains in effect in all valid applications that are
severable from the invalid applications.

NEW SECTION. Section 9. Retroactive applicability.
[Sections 2, 4, and 5] apply retroactively, within the meaning of
1-2-109, to causes of action that accrued and judgments that
occurred after January 1, 1990."

-END-

HOUSE BILL NO. 122

INTRODUCED BY MCGEE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT; PROVIDING THAT AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS BE SUBJECT TO GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF IMPRISONMENT; PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION; CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; ~~AND~~ AMENDING SECTIONS 25-10-404, 37-1-308, 49-2-501, AND 53-9-109, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

APPROVED BY COM
ON JUDICIARY

HOUSE BILL NO. 122

INTRODUCED BY MCGEE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT; PROVIDING THAT AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS BE SUBJECT TO GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF IMPRISONMENT; PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION; CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; ~~AND~~ AMENDING SECTIONS 25-10-404, 37-1-308, 49-2-501, AND 53-9-109, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions -- costs. (1) A person incarcerated in a correctional facility of the department of corrections may not attend a civil proceeding IN WHICH THE PERSON IS A PARTY unless ~~the person is:~~

(a) THE PERSON IS a respondent in a proceeding to terminate parental rights; or

(b) ~~a party to the civil proceeding and~~ the court determines that ~~the person~~ A PARTY will be substantially and irreparably prejudiced by not attending the civil proceeding.

(2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the department of corrections to attend a court proceeding without first:

(a) notifying the department and allowing the department 15 days to file a written objection; and

(b) if requested, granting the department an opportunity to appear and present evidence that the person's attendance at the proceeding represents a security risk.

(3) A person who requests that a person in the legal custody of the department of corrections

1 attend a civil proceeding shall pay all costs associated with security.

2
3 **NEW SECTION. Section 2. Report by supervising authority required.** (1) Subsequent to any
4 judgment awarding money damages to a prisoner under the legal custody of the department of corrections,
5 the prisoner's supervising authority shall, upon request of the court, submit a report identifying:

6 (a) the total costs incurred by the state or county during the prisoner's incarceration;

7 (b) the criminal sentences imposed upon the prisoner, including:

8 (i) the amount of restitution, if any, ordered in each sentence;

9 (ii) the name and current address of each victim or other person to whom restitution is owed;

10 (iii) the amount of restitution paid by the incarcerated person; and

11 (iv) the amount of restitution currently owed by the incarcerated person for each sentence;

12 **(C) THE AMOUNT OF ANY CHILD SUPPORT OWED BY THE PRISONER.**

13 (2) The court shall provide a copy of the report to the prisoner, who has 15 days following receipt
14 to file an objection. The court may hold a hearing to consider objections raised by the prisoner.

15 (3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the
16 amount of restitution, CHILD SUPPORT, and repayment for per diem costs owed by the prisoner. The court
17 shall issue an order:

18 (a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution,
19 CHILD SUPPORT, and repayment costs; and

20 (b) ordering the party owing money damages to the prisoner to pay an amount equal to the
21 restitution owed by the prisoner to the crime victims compensation and assistance account established in
22 53-9-109, TO PAY ANY OUTSTANDING CHILD SUPPORT PAYMENTS TO THE DEPARTMENT OF PUBLIC
23 HEALTH AND HUMAN SERVICES FOR DISBURSEMENT TO THE OBLIGEE, and to pay per diem costs owed
24 by the prisoner. All restitution ~~owed~~ OWED by the prisoner must be paid prior to payment of any CHILD
25 SUPPORT PAYMENTS. ALL CHILD SUPPORT OWED BY THE PRISONER MUST BE PAID PRIOR TO THE
26 PAYMENT OF ANY per diem costs.

27
28 **Section 3.** Section 25-10-404, MCA, is amended to read:

29 "25-10-404. **Poor persons not required to prepay fees -- definition.** (1) Except as provided in
30 ~~subsection~~ subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported

1 by a financial statement, stating that the person has a good cause of action or defense and is unable to pay
2 the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~
3 subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a
4 request for waiver of fees, the person may commence and prosecute or defend an action in any of the
5 courts and administrative tribunals of this state and the officers of the courts and administrative tribunals
6 shall issue and serve all writs and perform all services in the action without demanding or receiving their
7 fees in advance.

8 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request
9 for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval.
10 If the request is subsequently denied, the fees must be paid before the case may proceed further.

11 (3) A person represented by an entity that provides free legal services to indigent persons is not
12 required to file the financial statement required by subsection (1).

13 (4) The department of justice shall, by rule, prescribe the form of the financial statement required
14 by subsection (1) for use in determining indigence. The form may require the disclosure of income and
15 assets, including but not limited to the ownership of real and personal property, cash, and savings.

16 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals
17 a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition
18 to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account
19 statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately
20 preceding any filing.

21 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil
22 complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a
23 prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of
24 any fees required by law when funds exist. The court shall consider the indigence policy of the department
25 when determining whether funds exist.

26 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or
27 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall
28 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by
29 the court.

30 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or

1 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial
2 release, or a diversionary program and who is subject to incarceration, detention, or admission to any
3 facility."

4
5 **Section 4.** Section 37-1-308, MCA, is amended to read:

6 **"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception.** (1) A
7 person, government, or private entity may submit a written complaint to the department charging a licensee
8 or license applicant with a violation of this part and specifying the grounds for the complaint.

9 (2) If the department receives a written complaint or otherwise obtains information that a licensee
10 or license applicant may have committed a violation of this part, the department may, with the concurrence
11 of a member of the screening panel established in 37-1-307, investigate to determine whether there is
12 reasonable cause to believe that the licensee or license applicant has committed the violation. A person or
13 private entity, but not a government entity, filing a complaint under this section in good faith is immune
14 from suit in a civil action related to the filing or contents of the complaint.

15 (3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS
16 A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."

17
18 **Section 5.** Section 49-2-501, MCA, is amended to read:

19 **"49-2-501. Filing complaints -- exception.** (1) A complaint may be filed by or on behalf of any
20 person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint
21 must be in the form of a written, verified complaint stating the name and address of the person, and the
22 educational institution, financial institution, or governmental entity or agency alleged to have engaged in
23 the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff
24 may file a complaint in like manner when a discriminatory practice comes to its attention.

25 (2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this
26 chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory
27 practice occurred or was discovered.

28 (b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing
29 a grievance in accordance with any grievance procedure established by a collective bargaining agreement,
30 contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the

1 grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful
2 discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within
3 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice
4 occurred or was discovered.

5 (c) Any complaint not filed within the times set forth ~~herein~~ in this subsection (2) may not be
6 considered by the commission.

7 (3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS
8 A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."

9
10 **Section 6.** Section 53-9-109, MCA, is amended to read:

11 **"53-9-109. Crime victims compensation and assistance account.** (1) There is a crime victims
12 compensation and assistance account in the state special revenue fund. There must be paid into this
13 account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses
14 involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result
15 of citations or tickets issued by the highway patrol. Except as provided in ~~subsection~~ subsections (2) and
16 (3), the money in the account must be used solely for the purposes of this part and for victims' assistance
17 program coordination and planning provided by the division.

18 (2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever
19 the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000
20 must be deposited in the general fund. (See compiler's comments for contingent termination of certain
21 text.)

22 (3) Funds deposited into the account pursuant to [section 2] must be distributed to a victim or
23 person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified
24 victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person.
25 If a qualified victim or person cannot be located, that victim's or person's share of restitution must be
26 retained in the account."

27
28 **NEW SECTION. Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as
29 an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to
30 [sections 1].

1 (2) [Section 2] is intended to be codified as an integral part of Title 25, chapter 10, and the
2 provisions of Title 25, chapter 10, apply to [section 2].

3
4 NEW SECTION. SECTION 8. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
5 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
6 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
7 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

8
9 NEW SECTION. SECTION 9. RETROACTIVE APPLICABILITY. [SECTIONS 2, 4, AND 5] APPLY
10 RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO CAUSES OF ACTION THAT ACCRUED AND
11 JUDGMENTS THAT OCCURRED AFTER JANUARY 1, 1990.

12 -END-

COMMITTEE--SENATE JUDICIARY

CHAIRMAN--BRUCE CRIPPEN
 SECRETARY--JUDY KEINTZ/JODY BIRD/36
 NORMAL SCHEDULE => SITE: ROOM 325

DAYS: M,T,W,T,F

TIME: 10:00 A.M.

- BILL NO-- REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0029	BOHLINGER, JOHN	PROHIBIT POSSESSION, CARRIAGE & STORAGE OF WEAPON IN A SCHOOL BUILDING			
	1/21	1/31	CONCUR AS AMENDED	VOTE: 8-2	2-5
					2/07
HB0040	COBB, JOHN	EXTEND FOR 2 YRS ATTORNEY GENERAL'S DUTY TO REPRESENT STATE IN BANKRUPTCIES			
	1/24	3/04	CONCUR	VOTE: 10-0	3-4
					3/05
HB0043	BANKHEAD, PAUL	REDEFINE ESCAPE AND ALLOW GOVERNMENT TO RECOUP COSTS FROM ESCAPEE			
	1/23	1/29	CONCUR	VOTE: 8-2	1-30
					1/30
HB0044	DEVANEY, CHARLES	LIMIT AND MONITOR INMATE FINANCIAL TRANSACTIONS; FINANCIAL ACCT DISCLOSURE			
	2/11	3/11	CONCUR AS AMENDED	VOTE: 6-4	3-14
					3/15
HB0065	MENAHAN, RED	INCREASE NEGLIGENT VEHICULAR ASSAULT PENALTY WHEN BODILY INJURY IS SERIOUS			
	1/27	3/11	CONCUR AS AMENDED	VOTE: 9-1	3-11
					3/12
HB0068	MCGEE, DANIEL	ABOLISH GOV'T. LIABILITY FOR NEGLIGENT TORTS TO INCARCERATED CRIMINALS			
	2/11	3/06	CONCUR AS AMENDED	VOTE: 9-1	3-19
					3/24
HB0098	CLARK, ROBERT	ELIMINATE HANGING AS MEANS OF EXECUTION			
	1/29	3/05	CONCUR	VOTE: 8-2	3-5
					3/06
HB0100	SOFT, LOREN	CHANGE PUNISHMENT FOR DRUNK DRIVING			
	3/22	3/26	CONCUR AS AMENDED	VOTE: 7-3	4-7
					4/07
HB0111	AHNER, CHRIS	REVISE VIOLENT OFFENDER AND SEXUAL OFFENDER REGISTRATION LAW			
	1/30	3/06	CONCUR AS AMENDED	VOTE: 8-2	3-7
					3/13
HB0122	MCGEE, DANIEL	REQUIRE PAYMENT OF FILING FEES PRIOR TO CIVIL ACTION BY PRISONERS			
	1/24	2/05	CONCUR AS AMENDED	VOTE: 9-1	2-7
					2/11
	SMITH, LIZ	REVISE MEDICAL PAROLE AND STAGGER TERMS OF MEMBERS OF BD. OF PARDONS & PAROL			

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on February 5, 1997, at 8:00 A.M., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)

Members Excused: Sen. Walter L. McNutt (R)

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 231, posted January 27
HB 122, HB 135, posted
February 5,

Executive Action: SB 109, SB 210, SB 222, HB 29

EXECUTIVE ACTION ON SB 109

Amendments: sb010903.av1. (revision of sb010902.av1 from February 4, 1997)

Discussion: SENATOR RIC HOLDEN. If we strike "unless the Court makes a finding...", we will have a revised Fiscal Note with about three more FTE, so I want to leave this in the bill. It still gives the judge discretion.

VICE CHAIRMAN GROSFIELD. So the Board would go to four members?
Diana Leibinger. No, just two alternate members.

CHAIRMAN CRIPPEN. The title of the bill is confusing, as it was not changed when page 3 was amended in the House.

{Tape: 1; Side: B; Approx. Time Count: #31.8; Comments: None.}

Closing by Sponsor: REPRESENTATIVE LIZ SMITH. I am proposing an amendment On page 3, line 25, we ask that following "syndrome" you add "that the Board renders the..." I haven't given this amendment to the Department (**EXHIBIT #1**).

HEARING ON HB 122

Sponsor: REPRESENTATIVE DAN MCGEE, HD 21, Laurel.

Proponents: Dave Ohler, Chief Legal Counsel, Department of Corrections.
Clancy Cone, M.D., Medical Director, Department of Corrections

Opponents: Russell Hill, Montana Trial Lawyers Association (MTLA)

Opening Statement by Sponsor: REPRESENTATIVE DAN MCGEE, HD 21, Laurel. The bill does five things. It requests a report of the prisoner's account be given to the Court, and requires prisoners to pay a filing fee when they file a complaint and are not indigent.

The bill also requires any award to go to child support, victim restitution, incarceration costs, etc. It would preclude filing with the Human Rights Commission, but would prisoners would still have access through federal court. The bill allows the Department to object to transfer of an inmate and allows that inmate to pay for a transfer in writs of habeas corpus at civil proceedings.

The bill defines prison 28-U.S.C., 1915 language and the Prison Legislation Reform Act (PLRA) recently passed by Congress. Section 4 would eliminate complaints filed by prisoners against licensed professionals. Section 6 provides for funds in Section 2 to be put in an account.

Proponents' Testimony: Dave Ohler, Chief Legal Counsel, Department of Corrections. The Department stands in support of the bill. It is important to note that Section 3 has an escape provision for the truly indigent, patterned after the Prison Legislation Reform Act, signed by the President in April, 1996

We have seen a 15 percent reduction in federal court filings, but an increase in filings in state court. Sometimes an inmate doesn't know what he has agreed to file, so I believe this legislation would deter such filings.

Clancy Cone, M.D., Medical Director, Department of Corrections.
I rise in support of this bill.

Opponents' Testimony: Russell Hill, Montana Trial Lawyers Association (MTLA). We see a specific problem with the bill. Anecdotal evidence sits with us. This bill is frivolous and creates more problems. Section 1 is not based on security, but on trustee level. Access to court via constitutional guarantee is not in the absolute power of the Legislature.

We have no problem with restitution in Section 2, but it operates as a disincentive, clearly an additional penalty. For example, prisoners promised protection by the State were brutally murdered and tortured.

Section 3, page 3 has many provisions regarding whether you are going to require an inmate to put up \$100 or \$200. Sections 4 and 5 are still being amended, as they create a class of people who can't complaint about licensing or human rights issues.

{Tape: 1; Side: B; Approx. Time Count: #6.3; Comments: None.}

We ask that the Committee look at amending Section 9 retroactively to 1890 and not 1990, as the only reason for this bill is the prison riots.

Questions From Committee Members and Responses: VICE CHAIRMAN LORENTS GROSFIELD. Who is being currently filed against? David Ohler. Ninety-eight percent are as a result of a conviction or condition at the prison or parole revocation. Defendants include the State of Montana, all of the Department of Corrections employees, and sometimes county employees.

In Section 2, pertaining to repayment of per diem costs, are we adding a penalty after the fact? David Ohler. No, just a requirement that the inmate pay his bills. Only two cases have gone to trial in which judgment was rendered for the inmate (totaling \$9000) since I've been with the Department.

VICE CHAIRMAN GROSFIELD. Does Section 4 apply to attorneys? David Ohler. I don't know, but it applies to medical doctors, and dentists. In 1992 we had 60-70 nearly identical complaints against the Board of Pardons. In 1995 we had 10-15 complaints against medical license holders.

David Ohler passed out Department Amendments.

SENATOR STEVE DOHERTY. Why is it not a good idea to make a prisoner repay the State from inheritances, etc., as well as with money received from filing a complaint. David Ohler. The Department has another bill to deal with this.

SENATOR DOHERTY. What if a licensed individual commits a clear act of malpractice? David Ohler. I don't belie this bill

precludes filing a suite for medical malpractice, but precludes filing with a medical/legal panel.

SENATOR DOHERTY. I don't believe they can file medical malpractice without filing with the medical/legal panel first. Why did you pick the date of January 1, 1990? What is the number of cases filed since that date? **David Ohler.** I believe the number of active human rights cases are about 10-15.

SENATOR DOHERTY. What is the compelling reasons for extinguishing these claims? **David Ohler.** We are eliminating a particular avenue of filing these claims.

SENATOR BARTLETT. Is the intent to limit inmates who are security risks or any inmate? **David Ohler.** We transport prisoners around the State for any number of case situations, and are concerned about the cost, as well as security.

{Tape: 2; Side: A; Approx. Time Count: #16.6; Comments: 9:56 a.m..}

SENATOR BARTLETT. If a prisoner were being such, he would be subject to this legislature, just as if here were the complainant. In Section 3, Subsections (5) and (6), who will do the certification of the trust account? **David Ohler.** We have been doing it this way since April, 1996. we make a copy and file it with the Court, who determines what a prison can pay.

SENATOR BARTLETT. In Subsection (6) concerning indigence policy, what procedures are used, and how long will it take the Department of Correction to change, if it decides to do so. **David Ohler.** It would typically take a couple of months, and could be done at their discretion.

SENATOR REINY JABS. What rights do prisoners retain? **David Ohler.** The first amendment guarantees free speech, equal protection, due process, and prohibits unreasonable search and seizure.

SENATOR BARTLETT. The language regarding civil awards to go to victims seems to be much broader. Am I correct in this? **David Ohler.** The money would only go to the victim of that inmate.

CHAIRMAN CRIPPEN. Where would the extra dollars go for crime victims? To the general fund? **David Ohler.** I believe so, but I'm not sure.

Closing by Sponsor: REPRESENTATIVE MCGEE. An individual in my district who was formerly imprisoned, told me he would flood the system with filings if things didn't go his way. This bill is about non-couple filing, about costs paid by all Montanans, and about fairness to the people of Montana.

Montana State Prison inmates knew more than I did about prison legislation. I believe we're creating jail-house lawyers while these people are incarcerated. They're already supplied with attorneys, and law students for help. Our citizens don't have this luxury.

A lot of inmate litigation is wrong and inappropriate. Let's make them go through the same hoops and hurdles as anyone else.

The Committee recessed at 10:03 a.m. and resumed at 10:13 a.m.

HEARING ON SB 231

Sponsor: SENATOR CASEY EMERSON, SD 14, Bozeman

Proponents: Jerry O'Neil

Bob Steele, Montanans for Due Process

Michael Fellows, Montana Libertarian Party

Opponents: Gary Davis, Luxan and Murfitt, Committee on Practice,
Montana State Bar

John Alke, Montana Defense Trial Lawyers

Ward Shanahan, Pro Bono Lobby Committee, Montana State
Bar

Pat Chenovick, Administrator, Montana Supreme Court

Bob Gilbert, Montana Magistrates Association

Russell Hill, Montana Trial Lawyers Association

John Conner, Montana County Attorneys Association

{Tape: 2; Side: A; Approx. Time Count: #1.9; Comments: None.}

Opening Statement by Sponsor: SENATOR CASEY EMERSON, SD 14,
Bozeman. This is a fairly short bill for a constitutional
amendment of big importance. Page 2 strikes "make" and inserts
"recommends to the Legislature".

These legislative powers don't really belong in the Court system,
but to the Legislative branch as a protection for the people.
They were with the Legislature until the Montana Constitutional
Convention in 1972. Now the Judicial branch has total power to
make, administer, and enforce rules, and we've had some things
change that are not right.

In general, the judicial system has gone downhill. Seventeen
states accepted this change around 1972, just as Montana did. I
am providing an article by Judge Harold Rothwax who spent 25
years in the New York judicial system (EXHIBITS #3, #3a-#3i).

Jack Levitt, a retired judge from California agrees with most of
the book. He also taught judges in New York. Federal Judge
Bork, who was turned down for the U.S. Supreme Court believes the
Legislature should override the Courts. Jerry Pence, a well-
known attorney, and attorneys Grimes and Isaac, all agreed the
justice system is in shambles.

SENATE JUDICIARY COMMITTEE

AMENDMENT NO. 5

DATE 2-7-97

FILE NO. SR122

Amendments to House Bill No. 122
Third Reading Copy (blue)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Beth Baker by request of Mt. Bd. of Crime Control
(put into form by Valencia Lane)
February 6, 1997

1. Page 2, lines 21 and 22.
Following: "to the" on line 21
Strike: remainder of line 21 through "53-9-109" on line 22
Insert: "person designated under 46-18-245 to supervise the
making of restitution payments"

Amendments to House Bill No. 122
Third Reading Copy (blue)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
February 6, 1997

1. Title, line 8.
Strike: "AN AWARD OF"
Following: "MONEY"
Strike: "DAMAGES"
2. Title, lines 8 and 9.
Following: "PRISONER" on line 8
Strike: remainder of line 8 through "CORRECTIONS" on line 9
3. Title, lines 11 through 14.
Following: "IMPRISONMENT;" on line 11
Strike: remainder of line 11 through "PROCEEDINGS;" on line 14
Following: "~~AND~~"
Insert: "AND"
Following: "25-10-404"
Strike: ", "
4. Title, line 15.
Strike: "37-1-308, 49-2-501,"
Following: "MCA"
Strike: "; AND PROVIDING A RETROACTIVE APPLICABILITY DATE"
5. Page 1, line 19 through page 2, line 1.
Strike: section 1 in its entirety
Renumber: subsequent sections
6. Page 2, lines 3 and 4.
Following: "(1)" on line 3
Strike: remainder of line 3 through "to" on line 4
Insert: "If"
Following: "corrections"
Insert: "becomes entitled to receive a substantial amount of
money from any source" 
7. Page 2, line 5.
Following: "shall"
Strike: ", upon request of the court, submit"
Insert: "prepare"
8. Page 2, line 13.
Following: "(2) The"
Insert: "supervising authority shall submit the report along with
a petition for garnishment to the court that sentenced the
prisoner. The court may order garnishment of the prisoner's
money for the payment of restitution, child support, and per

diem costs of incarceration owed by the prisoner. Upon receipt of the petition, the"

9. Page 2, line 17.

Following: "shall"

Strike: "issue an"

Following: "order"

Strike: ":"

Insert: ", up to the amount of money available,"

10. Page 2, lines 18 and 19.

Strike: subsection (a) in its entirety

11. Page 2, line 20.

Strike: "(b) ordering the party owing money damages to the prisoner to pay"

Insert: "payment of"

12. Page 2, lines 21 and 22.

Following: "to the" on line 21

Strike: remainder of line 21 through "53-9-109, TO PAY" on line 22

Insert: "person designated under 46-18-245 to supervise the making of restitution payments,"

13. Page 2, line 23.

Strike: "to pay"

14. Page 4, line 5 through page 5, line 8.

Strike: sections 4 and 5 in their entirety

Renumber: subsequent sections

15. Page 5, lines 28 through 30.

Strike: subsection (1) in its entirety

16. Page 6, line 1.

Strike: "(2)"

Strike: "2"

Insert: "1"

17. Page 6, line 2.

Strike: "2"

Insert: "1"

18. Page 6, lines 9 through 11.

Strike: section 9 in its entirety

Amendments to House Bill No. 122
Third Reading Copy (blue)

Requested by Senator Lynch
For the Committee on Judiciary

Prepared by Dave Ohler for Dept. of Corrections
(put into form by Valencia Lane)
February 6, 1997

1. Title, line 15.
Following: "49-2-501,"
Insert: "49-3-304,"

2. Page 5.
Following: line 9
Insert: "Section 6. Section 49-3-304, MCA, is amended to read:
"49-3-304. **Filing complaints.** (1) Except as provided in
subsection (2), a complaint under this chapter must be filed with
the commission within 180 days after the alleged unlawful
discriminatory practice occurred or was discovered.
(2) If the complainant has initiated efforts to resolve the
dispute underlying the complaint by filing a grievance in
accordance with any grievance procedure established by a
collective bargaining agreement, contract, or written rule or
policy, the complaint may be filed within 180 days after the
conclusion of the grievance procedure if the grievance procedure
concludes within 120 days after the alleged unlawful
discriminatory practice occurred or was discovered. If the
grievance procedure does not conclude within 120 days, the
complaint must be filed within 300 days after the alleged
unlawful discriminatory practice occurred or was discovered.
(3) A complaint not filed within the times set forth in
this section may not be considered by the commission.
(4) The provisions of subsections (1) through (3) do not
apply to an individual who is incarcerated as a result of a
conviction for a criminal offense."
Renumber: subsequent sections

3. Page 6, line 9.
Following: "2"
Strike: "1"
Insert: "and"
Following: "4"
Strike: "AND 5"
Insert: "through 6"

**MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE**

ROLL CALL

DATE

2-5-97

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MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 7, 1997, at 9:00 a.m., in Room 104, of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 256, posted February 4
SB 277, posted February 4
Executive Action: SB 277, SB 256, SB 232, HB 122

HEARING ON SB 256

Sponsor: DON HARGROVE, SD 16, Bozeman

Proponents: John Conner, Department of Justice and Gallatin
County Attorney Marty Lambert
Mike Batista, Department of Justice
Pat Chenovik, Administrator, Montana Supreme Court
Bill Sleeyter, Bozeman, Montana Peace Officers
Association

Opponents: None

Motion: SENATOR ESTRADA MOVED SB 232 DO PASS AS AMENDED.

Discussion: SENATOR BARTLETT. Is this reasonably comparable to the statute of limitations for other professions? Valencia Lane. It is very similar to that for attorneys and doctors.

Vote: SENATOR ESTRADA'S MOTION THAT SB 232 DO PASS AS AMENDED CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 122

Amendments: hb012201.avl, hb012202.avl, hb012203.avl

Valencia Lane. There are three sets of amendments. The most significant is SENATOR DOHERTY'S. SENATOR BARTLETT'S amendment (hb012201.avl) (EXHIBIT 5) is incorporated into SENATOR DOHERTY'S amendments (hb012202.avl) (EXHIBIT 6). The other is SENATOR LYNCH'S amendment (hb012203.avl) (EXHIBIT 7).

Discussion: SENATOR SUE BARTLETT. This is the same wording as in the 'gray' bill (EXHIBIT #8). A trial award made to an inmate would be subject to providing restitution to a victim via the Victim's Compensation Fund of Montana, which is a generalized pool for victims. The amendment says that \$1000 of \$2000 would go to the victim rather than to the general fund.

Motion: VICE CHAIRMAN LORENTS GROSFIELD MOVED TO AMEND HB 122 - hb012201.avl and hb012202.avl.

Discussion:

SEN. DOHERTY explained this would include amendments to the title (#1 and #2), and #6-#13, as well as striking "a substantial amount of" from #6.

Valencia Lane. With regard to inheritances, awards, etc., we didn't think that \$500 would be gone after, but larger amounts would be.

VICE CHAIRMAN GROSFIELD. I believe a prisoner ought to pay on the balance no matter how small the award is.

SENATOR REINY JABS. What if they receive property and not money? CHAIRMAN CRIPPEN. We would really be treading on thin ice. Do you want that farm sold? What about the prisoner's heirs, partners, and \$40-\$42 per diem costs for imprisonment? I can't support this. When someone is sentenced for a crime, their liberty and freedom is taken away. Now we want to hit them twice and take away their assets. VICE CHAIRMAN GROSFIELD. But we keep talking about the taxpayer as the innocent third party.

VICE CHAIRMAN GROSFIELD. This doesn't change restitution already provided for. Valencia Lane. This bill doesn't address the time of sentencing. This only addresses future, unexpected windfalls.

CHAIRMAN CRIPPEN. What if an inherited property were held in joint tenancy? **SENATOR MIKE HALLIGAN.** The sentencing order would detail specific restitution. If he paid all those and were still in prison and received an inheritance, where would it go then? **Valencia Lane.** In the current version of the bill, lines 6-12, someone takes payments and what is still owed into account.

SENATOR AL BISHOP. What would happen if the prisoner were married and had children? Would the court order child support? **SENATOR HALLIGAN.** Probably, yes. The prosecutor would have to specifically ask for this.

VICE CHAIRMAN GROSFIELD. If we pass these amendments, I believe judges would sentence with this in mind. **SENATOR HALLIGAN.** We just had a case where the son died, but the dad had to pay \$40,000 in back support.

SENATOR BARTLETT. There's a questions about how effectively attachment of wages is carried out under the supervision of the Department of Corrections. The Department needs a reminder about child support.

{Tape: 2; Side: A; Approx. Time Count: #37.4; Comments: 11:07 a.m..}

SENATOR SHARON ESTRADA. Where do the fines go?

Vote: SENATOR GROSFIELD'S MOTION TO ADOPT THE AMENDMENTS CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATOR CRIPPEN WHO VOTED NO.

Amendments: Valencia Lane. **SENATOR DOHERTY** wants to get rid of Section 1. In the title it should have stricken line 14 up to "proceed".

Discussion: **CHAIRMAN CRIPPEN.** So, if this amendment is stricken, we would go back to the original intent of the bill? **SENATOR BARTLETT.** How realistic is it for the Legislature to say the Court may not issue a writ of habeas corpus without doing other things first? **CHAIRMAN CRIPPEN.** If you look at Subsection (2), this is an effort by the Department of Corrections to shift costs.

{Tape: 2; Side: B; Approx. Time Count: #3.2; Comments: 11:14 a.m..}

SENATOR HALLIGAN. I believe this language needs to stay in the bill to prevent frivolous suits.

CHAIRMAN CRIPPEN. Is amendment #14, on page 4 of the 'gray' bill striking all of Sections 4 and 5? **Valencia Lane.** These are two different things.

SENATOR HALLIGAN. There are plenty of cases where doctors are sued because prisoners were badly treated while incarcerated. **Valencia Lane.** There may be a constitutional problem, as well.

VICE CHAIRMAN GROSFIELD. What if the incident being sued over took place before incarceration?

Motion/Vote: **SENATOR HALLIGAN MOVED TO STRIKE SECTION 4. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS JABS AND HOLDEN WHO VOTED NO.**

SENATOR HALLIGAN. The problem is the way the federal courts cater to these guys who file frivolous suits.

Motion/Vote: **SENATOR HALLIGAN MOVED TO STRIKE SECTION 5. THE MOTION CARRIED UNANIMOUSLY.**

SENATOR GROSFIELD. I supported the motion, but I hope the Department of Corrections will come up with better language for the Conference Committee. I have no problem with the amendments being retroactive to 1990. **Valencia Lane.** Retroactive applicability is on page 6, line 9, and applied only to Sections 2, 4, and 5 of the 'gray' bill.

Motion: **SENATOR HALLIGAN MOVED TO ADOPT AMENDMENT #18 TO PUT THE EFFECTIVE DATE UPON PASSAGE AND APPROVAL, AND TO STRIKE SECTION 9 IN ITS ENTIRETY.**

Discussion: **SENATOR ESTRADA.** Why amendment #18? **SENATOR DOHERTY.** Because we thought applying it retroactively would affect about ten cases already there.

Vote: **SENATOR HALLIGAN'S MOTION TO ADOPT AMENDMENT #18 AND STRIKE SECTION 9 IN ITS ENTIRETY CARRIED UNANIMOUSLY.**

Discussion: **SENATOR BARTLETT.** Is the language on page 5, lines 22-26 now unnecessary? **Valencia Lane.** I believe you are correct.

Motion/Vote: **SENATOR BARTLETT MOVED TO DELETE SUBSECTION (3) ON PAGE 5, LINES 22-26, AND TO STRIKE SECTION 6 (REMARKED SECTION 3 ON THE 'GRAY' BILL). THE MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **VICE CHAIRMAN GROSFIELD MOVED HB 122 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT CHAIRMAN CRIPPEN WHO VOTED NO.**

VICE CHAIRMAN GROSFIELD was asked to CARRY HB 122.

SENATE JUDICIARY COMMITTEE

AMENDMENT NO. 5

Amendments to House Bill No. 122
Third Reading Copy (blue)

DATE 2-7-97

FILE NO. SR122

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Beth Baker by request of Mt. Bd. of Crime Control
(put into form by Valencia Lane)
February 6, 1997

1. Page 2, lines 21 and 22.
Following: "to the" on line 21
Strike: remainder of line 21 through "53-9-109" on line 22
Insert: "person designated under 46-18-245 to supervise the
making of restitution payments"

SENATE JUDICIARY COMMITTEE
COMMITTEE NO. 6
DATE 2-7-97
FILE NO. SB122

Amendments to House Bill No. 122
Third Reading Copy (blue)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
February 6, 1997

1. Title, line 8.
Strike: "AN AWARD OF"
Following: "MONEY"
Strike: "DAMAGES"
2. Title, lines 8 and 9.
Following: "PRISONER" on line 8
Strike: remainder of line 8 through "CORRECTIONS" on line 9
3. Title, lines 11 through 14.
Following: "IMPRISONMENT;" on line 11
Strike: remainder of line 11 through "PROCEEDINGS;" on line 14
Following: "~~AND~~"
Insert: "AND"
Following: "25-10-404"
Strike: ", "
4. Title, line 15.
Strike: "37-1-308, 49-2-501,"
Following: "MCA"
Strike: ": AND PROVIDING A RETROACTIVE APPLICABILITY DATE"
5. Page 1, line 19 through page 2, line 1.
Strike: section 1 in its entirety
Renumber: subsequent sections
6. Page 2, lines 3 and 4.
Following: "(1)" on line 3
Strike: remainder of line 3 through "to" on line 4
Insert: "If"
Following: "corrections"
Insert: "becomes entitled to receive a substantial amount of
money from any source" 
7. Page 2, line 5.
Following: "shall"
Strike: ", upon request of the court, submit"
Insert: "prepare"
8. Page 2, line 13.
Following: "(2) The"
Insert: "supervising authority shall submit the report along with
a petition for garnishment to the court that sentenced the
prisoner. The court may order garnishment of the prisoner's
money for the payment of restitution, child support, and per

diem costs of incarceration owed by the prisoner. Upon receipt of the petition, the"

9. Page 2, line 17.

Following: "shall"

Strike: "issue an"

Following: "order"

Strike: ":"

Insert: ", up to the amount of money available,"

10. Page 2, lines 18 and 19.

Strike: subsection (a) in its entirety

11. Page 2, line 20.

Strike: "(b) ordering the party owing money damages to the prisoner to pay"

Insert: "payment of"

12. Page 2, lines 21 and 22.

Following: "to the" on line 21

Strike: remainder of line 21 through "53-9-109, TO PAY" on line 22

Insert: "person designated under 46-18-245 to supervise the making of restitution payments,"

13. Page 2, line 23.

Strike: "to pay"

14. Page 4, line 5 through page 5, line 8.

Strike: sections 4 and 5 in their entirety

Renumber: subsequent sections

15. Page 5, lines 28 through 30.

Strike: subsection (1) in its entirety

16. Page 6, line 1.

Strike: "(2)"

Strike: "2"

Insert: "1"

17. Page 6, line 2.

Strike: "2"

Insert: "1"

18. Page 6, lines 9 through 11.

Strike: section 9 in its entirety

Amendments to House Bill No. 122
Third Reading Copy (blue)

AMATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 2-7-97
FILE NO. SB122

Requested by Senator Lynch
For the Committee on Judiciary

Prepared by Dave Ohler for Dept. of Corrections
(put into form by Valencia Lane)
February 6, 1997

1. Title, line 15.
Following: "49-2-501,"
Insert: "49-3-304,"

2. Page 5.
Following: line 9
Insert: "Section 6. Section 49-3-304, MCA, is amended to read:
"49-3-304. Filing complaints. (1) Except as provided in
subsection (2), a complaint under this chapter must be filed with
the commission within 180 days after the alleged unlawful
discriminatory practice occurred or was discovered.
(2) If the complainant has initiated efforts to resolve the
dispute underlying the complaint by filing a grievance in
accordance with any grievance procedure established by a
collective bargaining agreement, contract, or written rule or
policy, the complaint may be filed within 180 days after the
conclusion of the grievance procedure if the grievance procedure
concludes within 120 days after the alleged unlawful
discriminatory practice occurred or was discovered. If the
grievance procedure does not conclude within 120 days, the
complaint must be filed within 300 days after the alleged
unlawful discriminatory practice occurred or was discovered.
(3) A complaint not filed within the times set forth in
this section may not be considered by the commission.
(4) The provisions of subsections (1) through (3) do not
apply to an individual who is incarcerated as a result of a
conviction for a criminal offense."
Renumber: subsequent sections

3. Page 6, line 9.
Following: "2"
Strike: "1"
Insert: "and"
Following: "4"
Strike: "AND 5"
Insert: "through 6"

56012202.02

HOUSE BILL NO. 122

INTRODUCED BY MCGEE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT; PROVIDING THAT ~~AN AWARD OF MONEY DAMAGES~~ RECEIVED BY A PRISONER ~~WHO WAS INJURED WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS~~ BE SUBJECT TO GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF IMPRISONMENT; ~~PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION; CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; AND AMENDING SECTIONS 25-10-404, 27-4-806, 49-2-807, AND 53-9-109, MCA, AND PROVIDING A RETROACTIVE APPLICABILITY DATE."~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions -- costs. (1) A person incarcerated in a correctional facility of the department of corrections may not attend a civil proceeding IN WHICH THE PERSON IS A PARTY unless the person is:~~

~~(a) THE PERSON IS a respondent in a proceeding to terminate parental rights; or~~

~~(b) ~~a party to the civil proceeding~~ and the court determines that the person A PARTY will be substantially and irreparably prejudiced by not attending the civil proceeding.~~

~~(2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the department of corrections to attend a court proceeding without first:~~

~~(a) notifying the department and allowing the department 15 days to file a written objection; and~~

~~(b) if requested, granting the department an opportunity to appear and present evidence that the person's attendance at the proceeding represents a security risk.~~

~~(3) A person who requests that a person in the legal custody of the department of corrections~~

1 attend a civil proceeding shall pay all costs associated with security.

2

3 NEW SECTION. Section 2. Report by supervising authority required. (1) ~~Subsequent to any~~
 4 ~~judgment awarding money damages to~~ ^{If} a prisoner under the legal custody of the department of corrections, ^{becomes entitled to receive a substantial}
 5 the prisoner's supervising authority shall, ~~upon request of the court, submit~~ ^{prepare} a report identifying:

6 (a) the total costs incurred by the state or county during the prisoner's incarceration;

7 (b) the criminal sentences imposed upon the prisoner, including:

8 (i) the amount of restitution, if any, ordered in each sentence;

9 (ii) the name and current address of each victim or other person to whom restitution is owed;

10 (iii) the amount of restitution paid by the incarcerated person; and

11 (iv) the amount of restitution currently owed by the incarcerated person for each sentence;

12 (C) THE AMOUNT OF ANY CHILD SUPPORT OWED BY THE PRISONER.

13 (2) The court shall provide a copy of the report to the prisoner, who has 15 days following receipt
 14 to file an objection. The court may hold a hearing to consider objections raised by the prisoner.

15 (3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the
 16 amount of restitution, CHILD SUPPORT, and repayment for per diem costs owed by the prisoner. The court
 17 shall ~~issue an order~~, ^{up to the amount of money available,}

18 ~~(a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution,~~

19 ~~CHILD SUPPORT, and repayment costs, and~~

20 ~~(b) ordering the party owing money damages to the prisoner to pay~~ ^{payment of} an amount equal to the
 21 restitution owed by the prisoner to the ~~crime victims compensation and assistance account established in~~
 22 ~~50-9-100, TO PAY~~ ^{person designated under 46-18-245 to supervise the making of restitution payments,} ANY OUTSTANDING CHILD SUPPORT PAYMENTS TO THE DEPARTMENT OF PUBLIC

23 HEALTH AND HUMAN SERVICES FOR DISBURSEMENT TO THE OBLIGEE, and to pay per diem costs owed
 24 by the prisoner. All restitution ~~owed~~ OWED by the prisoner must be paid prior to payment of any CHILD
 25 SUPPORT PAYMENTS. ALL CHILD SUPPORT OWED BY THE PRISONER MUST BE PAID PRIOR TO THE
 26 PAYMENT OF ANY per diem costs.

27

28 ²
 Section 2. Section 25-10-404, MCA, is amended to read:

29 "25-10-404. Poor persons not required to prepay fees -- definition. (1) Except as provided in
 30 subsection subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported

1 by a financial statement, stating that the person has a good cause of action or defense and is unable to pay
2 the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~
3 subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a
4 request for waiver of fees, the person may commence and prosecute or defend an action in any of the
5 courts and administrative tribunals of this state and the officers of the courts and administrative tribunals
6 shall issue and serve all writs and perform all services in the action without demanding or receiving their
7 fees in advance.

8 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request
9 for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval.
10 If the request is subsequently denied, the fees must be paid before the case may proceed further.

11 (3) A person represented by an entity that provides free legal services to indigent persons is not
12 required to file the financial statement required by subsection (1).

13 (4) The department of justice shall, by rule, prescribe the form of the financial statement required
14 by subsection (1) for use in determining indigence. The form may require the disclosure of income and
15 assets, including but not limited to the ownership of real and personal property, cash, and savings.

16 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals
17 a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition
18 to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account
19 statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately
20 preceding any filing.

21 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil
22 complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a
23 prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of
24 any fees required by law when funds exist. The court shall consider the indigence policy of the department
25 when determining whether funds exist.

26 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or
27 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall
28 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by
29 the court.

30 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or

1 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial
2 release, or a diversionary program and who is subject to incarceration, detention, or admission to any
3 facility."

4
5 ~~Section 4. Section 37-1-308, MCA, is amended to read:~~

6 ~~"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception. (1) A~~
7 ~~person, government, or private entity may submit a written complaint to the department charging a licensee~~
8 ~~or license applicant with a violation of this part and specifying the grounds for the complaint.~~

9 ~~(2) If the department receives a written complaint or otherwise obtains information that a licensee~~
10 ~~or license applicant may have committed a violation of this part, the department may, with the concurrence~~
11 ~~of a member of the screening panel established in 37-1-307, investigate to determine whether there is~~
12 ~~reasonable cause to believe that the licensee or license applicant has committed the violation. A person or~~
13 ~~private entity, but not a government entity, filing a complaint under this section in good faith is immune~~
14 ~~from suit in a civil action related to the filing or contents of the complaint.~~

15 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~
16 ~~A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."~~

17
18 ~~Section 5. Section 49-2-501, MCA, is amended to read:~~

19 ~~"49-2-501. Filing complaints -- exception. (1) A complaint may be filed by or on behalf of any~~
20 ~~person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint~~
21 ~~must be in the form of a written, verified complaint stating the name and address of the person, and the,~~
22 ~~educational institution, financial institution, or governmental entity or agency alleged to have engaged in~~
23 ~~the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff~~
24 ~~may file a complaint in like manner when a discriminatory practice comes to its attention.~~

25 ~~(2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this~~
26 ~~chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory~~
27 ~~practice occurred or was discovered.~~

28 ~~(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing~~
29 ~~a grievance in accordance with any grievance procedure established by a collective bargaining agreement,~~
30 ~~contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the~~

~~grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.~~

(c) Any complaint not filed within the times set forth herein in this subsection (2) may not be considered by the commission.

(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."

3

~~Section 53-9-109~~. Section 53-9-109, MCA, is amended to read:

"53-9-109. Crime victims compensation and assistance account. (1) There is a crime victims compensation and assistance account in the state special revenue fund. There must be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. Except as provided in ~~subsection~~ subsections (2) and (3), the money in the account must be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the division.

(2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000 must be deposited in the general fund. (See compiler's comments for contingent termination of certain text.)

(3) Funds deposited into the account pursuant to [section 2] must be distributed to a victim or person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person. If a qualified victim or person cannot be located, that victim's or person's share of restitution must be retained in the account."

4

NEW SECTION. Section 7. Codification instruction. ~~(1) [Section 1] is intended to be codified as an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to [sections 1].~~

1 ~~(2)~~ [Section ~~2~~] is intended to be codified as an integral part of Title 25, chapter 10, and the
2 provisions of Title 25, chapter 10, apply to [section ~~2~~].

3
4 NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
5 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
6 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
7 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

~~NEW SECTION. SECTION 9. RETROACTIVE APPLICABILITY. (SECTIONS 2, 4, AND 51 APPLY~~
~~RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO CAUSES OF ACTION THAT ACCRUED AND~~
~~JUDGMENTS THAT OCCURRED AFTER JANUARY 1, 1990.~~

-END-

**MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE**

ROLL CALL

DATE

2-7-97

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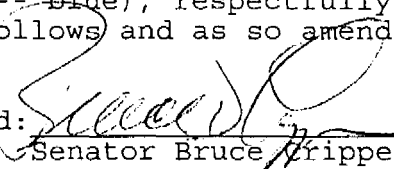


SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 8, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill 122 (third reading copy -- blue), respectfully report that House Bill 122 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Grippen, Chair

That such amendments read:

1. Title, line 8.

Strike: "AN AWARD OF"

Following: "MONEY"

Strike: "DAMAGES"

2. Title, lines 8 and 9.

Following: "PRISONER" on line 8

Strike: remainder of line 8 through "CORRECTIONS" on line 9

3. Title, lines 11 and 12.

Following: "IMPRISONMENT;" on line 11

Strike: remainder of line 11 through "COMMISSION;" on line 12

4. Title, line 14.

Strike: "SECTIONS"

Insert: "SECTION"

5. Title, line 15.

Strike: "37-1-308, 49-2-501, AND 53-9-109,"

Following: "PROVIDING"

Strike: "A RETROACTIVE APPLICABILITY"

Insert: "AN IMMEDIATE EFFECTIVE"

6. Page 2, lines 3 and 4.

Following: "(1)" on line 3

Strike: remainder of line 3 through "to" on line 4

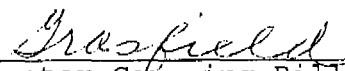
Insert: "If"

Following: "corrections"

Insert: "becomes entitled to receive money from any source"

7. Page 2, line 5.


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

300943SC.SRF

Following: "shall"

Strike: ", upon request of the court, submit"

Insert: "prepare"

8. Page 2, line 13.

Following: "(2) The"

Insert: "supervising authority shall submit the report along with a petition for garnishment to the court that sentenced the prisoner. The court may order garnishment of the prisoner's money for the payment of restitution, child support, and per diem costs of incarceration owed by the prisoner. Upon receipt of the petition, the"

9. Page 2, line 17.

Following: "shall"

Strike: "issue an"

Following: "order"

Strike: ":"

Insert: ", up to the amount of money available,"

10. Page 2, lines 18 and 19.

Strike: subsection (a) in its entirety

11. Page 2, line 20.

Strike: "(b) ordering the party owing money damages to the prisoner to pay"

Insert: "payment of"

12. Page 2, lines 21 and 22.

Following: "to the" on line 21

Strike: remainder of line 21 through "53-9-109, TO PAY" on line 22

Insert: "person designated under 46-18-245 to supervise the making of restitution payments,"

13. Page 2, line 23.

Strike: "to pay"

14. Page 4, line 5 through page 5, line 26.

Strike: sections 4 through 6 in their entirety

Renumber: subsequent sections

15. Page 6, lines 9 through 11.

Strike: section 9 in its entirety

Insert: "NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval."

-END-

APPROVED BY COM
ON JUDICIARY

HOUSE BILL NO. 122

INTRODUCED BY MCGEE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT; PROVIDING THAT ~~AN AWARD OF MONEY DAMAGES~~ RECEIVED BY A PRISONER ~~WHO WAS INJURED WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS~~ BE SUBJECT TO GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF IMPRISONMENT; ~~PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION;~~ CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; ~~AND AMENDING SECTIONS~~ SECTION 25-10-404, 37-1-308, 49-2-501, AND 53-9-109, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions -- costs.** (1) A person incarcerated in a correctional facility of the department of corrections may not attend a civil proceeding IN WHICH THE PERSON IS A PARTY unless ~~the person is:~~

(a) THE PERSON IS a respondent in a proceeding to terminate parental rights; or(b) ~~a party to the civil proceeding and~~ the court determines that ~~the person~~ A PARTY will be substantially and irreparably prejudiced by not attending the civil proceeding.

(2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the department of corrections to attend a court proceeding without first:

(a) notifying the department and allowing the department 15 days to file a written objection; and

(b) if requested, granting the department an opportunity to appear and present evidence that the person's attendance at the proceeding represents a security risk.

(3) A person who requests that a person in the legal custody of the department of corrections attend a civil proceeding shall pay all costs associated with security.

NEW SECTION. Section 2. Report by supervising authority required. (1) ~~Subsequent to any judgment awarding money damages to~~ IF a prisoner under the legal custody of the department of corrections BECOMES ENTITLED TO RECEIVE MONEY FROM ANY SOURCE, the prisoner's supervising authority shall, ~~upon request of the court, submit~~ PREPARE a report identifying:

- (a) the total costs incurred by the state or county during the prisoner's incarceration;
- (b) the criminal sentences imposed upon the prisoner, including:
 - (i) the amount of restitution, if any, ordered in each sentence;
 - (ii) the name and current address of each victim or other person to whom restitution is owed;
 - (iii) the amount of restitution paid by the incarcerated person; and
 - (iv) the amount of restitution currently owed by the incarcerated person for each sentence;

(C) THE AMOUNT OF ANY CHILD SUPPORT OWED BY THE PRISONER.

(2) The SUPERVISING AUTHORITY SHALL SUBMIT THE REPORT ALONG WITH A PETITION FOR GARNISHMENT TO THE COURT THAT SENTENCED THE PRISONER. THE COURT MAY ORDER GARNISHMENT OF THE PRISONER'S MONEY FOR THE PAYMENT OF RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF INCARCERATION OWED BY THE PRISONER. UPON RECEIPT OF THE PETITION, THE court shall provide a copy of the report to the prisoner, who has 15 days following receipt to file an objection. The court may hold a hearing to consider objections raised by the prisoner.

(3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the amount of restitution, CHILD SUPPORT, and repayment for per diem costs owed by the prisoner. The court shall ~~issue an order,~~ UP TO THE AMOUNT OF MONEY AVAILABLE,

~~(a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution,~~ CHILD SUPPORT, and repayment costs; and

~~(b) ordering the party owing money damages to the prisoner to pay~~ PAYMENT OF an amount equal to the restitution owed by the prisoner to the ~~crime victims compensation and assistance account established in 53-9-109,~~ TO PAY PERSON DESIGNATED UNDER 46-18-245 TO SUPERVISE THE MAKING OF RESTITUTION PAYMENTS, ANY OUTSTANDING CHILD SUPPORT PAYMENTS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR DISBURSEMENT TO THE OBLIGEE, and ~~to pay~~ per diem

costs owed by the prisoner. All restitution ~~owned~~ OWED by the prisoner must be paid prior to payment of any CHILD SUPPORT PAYMENTS. ALL CHILD SUPPORT OWED BY THE PRISONER MUST BE PAID PRIOR TO THE PAYMENT OF ANY per diem costs.

Section 3. Section 25-10-404, MCA, is amended to read:

"25-10-404. Poor persons not required to prepay fees -- definition. (1) Except as provided in ~~subsection~~ subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported by a financial statement, stating that the person has a good cause of action or defense and is unable to pay the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~ subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a request for waiver of fees, the person may commence and prosecute or defend an action in any of the courts and administrative tribunals of this state and the officers of the courts and administrative tribunals shall issue and serve all writs and perform all services in the action without demanding or receiving their fees in advance.

(2) If a judge or presiding officer of an administrative tribunal is not available to approve a request for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval. If the request is subsequently denied, the fees must be paid before the case may proceed further.

(3) A person represented by an entity that provides free legal services to indigent persons is not required to file the financial statement required by subsection (1).

(4) The department of justice shall, by rule, prescribe the form of the financial statement required by subsection (1) for use in determining indigence. The form may require the disclosure of income and assets, including but not limited to the ownership of real and personal property, cash, and savings.

(5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately preceding any filing.

(6) If an indigent prisoner in the legal custody of the department of corrections files a civil complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of

1 any fees required by law when funds exist. The court shall consider the indigence policy of the department
2 when determining whether funds exist.

3 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or
4 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall
5 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by
6 the court.

7 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or
8 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial
9 release, or a diversionary program and who is subject to incarceration, detention, or admission to any
10 facility."

11
12 **Section 4.** ~~Section 37-1-308, MCA, is amended to read:~~

13 ~~"37-1-308. Unprofessional conduct — complaint — investigation — immunity — exception. (1) A~~
14 ~~person, government, or private entity may submit a written complaint to the department charging a licensee~~
15 ~~or license applicant with a violation of this part and specifying the grounds for the complaint.~~

16 ~~(2) If the department receives a written complaint or otherwise obtains information that a licensee~~
17 ~~or license applicant may have committed a violation of this part, the department may, with the concurrence~~
18 ~~of a member of the screening panel established in 37-1-307, investigate to determine whether there is~~
19 ~~reasonable cause to believe that the licensee or license applicant has committed the violation. A person or~~
20 ~~private entity, but not a government entity, filing a complaint under this section in good faith is immune~~
21 ~~from suit in a civil action related to the filing or contents of the complaint.~~

22 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~
23 ~~A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."~~

24
25 **Section 5.** ~~Section 49-2-501, MCA, is amended to read:~~

26 ~~"49-2-501. Filing complaints — exception. (1) A complaint may be filed by or on behalf of any~~
27 ~~person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint~~
28 ~~must be in the form of a written, verified complaint stating the name and address of the person, and the~~
29 ~~educational institution, financial institution, or governmental entity or agency alleged to have engaged in~~
30 ~~the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff~~

1 may file a complaint in like manner when a discriminatory practice comes to its attention.

2 (2) ~~(a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this~~
3 ~~chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory~~
4 ~~practice occurred or was discovered.~~

5 ~~(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing~~
6 ~~a grievance in accordance with any grievance procedure established by a collective bargaining agreement,~~
7 ~~contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the~~
8 ~~grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful~~
9 ~~discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within~~
10 ~~120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice~~
11 ~~occurred or was discovered.~~

12 ~~(c) Any complaint not filed within the times set forth herein in this subsection (2) may not be~~
13 ~~considered by the commission.~~

14 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~
15 ~~A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."~~
16

17 **Section 6.** ~~Section 53-9-109, MCA, is amended to read:~~

18 ~~"53-9-109. Crime victims compensation and assistance account. (1) There is a crime victims~~
19 ~~compensation and assistance account in the state special revenue fund. There must be paid into this~~
20 ~~account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses~~
21 ~~involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result~~
22 ~~of citations or tickets issued by the highway patrol. Except as provided in subsection subsections (2) and~~
23 ~~(3), the money in the account must be used solely for the purposes of this part and for victims' assistance~~
24 ~~program coordination and planning provided by the division.~~

25 ~~(2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever~~
26 ~~the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000~~
27 ~~must be deposited in the general fund. (See compiler's comments for contingent termination of certain~~
28 ~~text.)~~

29 ~~(3) Funds deposited into the account pursuant to [section 2] must be distributed to a victim or~~
30 ~~person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified~~

~~victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person. If a qualified victim or person cannot be located, that victim's or person's share of restitution must be retained in the account."~~

NEW SECTION. Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to [sections 1].

(2) [Section 2] is intended to be codified as an integral part of Title 25, chapter 10, and the provisions of Title 25, chapter 10, apply to [section 2].

NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

~~**NEW SECTION. SECTION 9. RETROACTIVE APPLICABILITY.** [SECTIONS 2, 4, AND 5] APPLY RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO CAUSES OF ACTION THAT ACCRUED AND JUDGMENTS THAT OCCURRED AFTER JANUARY 1, 1990.~~

NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0122, second reading - second house

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act requiring a prisoner in the legal custody of the Department of Corrections to either pay a filing fee to file a complaint in a civil proceeding or submit a certified copy of the prisoner's trust fund account statement; providing that money received by a prisoner be subject to garnishment for payment of victim restitution, child support, and per diem costs of imprisonment; clarifying the use of and providing limitations on the issuance of writs of habeas corpus for inmates to testify in civil proceedings and providing an immediate effective date.

ASSUMPTIONS:

1. This bill could reduce the cost of transporting inmates to court proceedings. This savings is negligible. Currently, there are approximately 30 court proceedings per year where an inmate has to be transported. The Department of Corrections (DOC) assumes that 50% of these trips could be avoided under this bill. However, there will be no corresponding cost savings because the correctional officers would be performing other regular duties in lieu of transporting inmates. This bill will increase safety to the facility and the public at large by reducing the number of inmates who must be supervised outside correctional facilities.
2. New Section 3 of this bill will allow the DOC to recoup costs of incarceration from inmates who receive money from any source. Two inmates have been awarded judgments in the last 6 years for a total of \$9,259. The DOC assumes that it will recoup costs from one award to an inmate in the 1999 biennium. The department is unable to estimate the amount of money that inmates will receive from other sources. Therefore the amount of money the courts will allow to be garnisheed for per diem costs of incarceration is unknown.
3. This bill has no impact on the Department of Administration.
4. This bill has no impact on the Department of Commerce.

FISCAL IMPACT:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Incarceration cost abatement	(4,630)	0

Funding:

General Fund (01)	(4,630)	0
-------------------	---------	---

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Savings generated by this bill will continue into future years.

Dave Lewis 3-14-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DAN MCGEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0122, second reading
- second house

Am HB 122 #2

1 HOUSE BILL NO. 122
2 INTRODUCED BY MCGEE
3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE
6 DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL
7 PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT;
8 PROVIDING THAT ~~AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED~~
9 ~~WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS~~ BE SUBJECT TO
10 GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF
11 IMPRISONMENT; ~~PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF~~
12 ~~COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION;~~
13 CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS
14 CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; ~~AND AMENDING SECTIONS~~ SECTION
15 25-10-404, 37-1-308, 49-2-501, AND 53-9-109, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY
16 AN IMMEDIATE EFFECTIVE DATE."
17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19

20 NEW SECTION. Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions --
21 costs. (1) A person incarcerated in a correctional facility of the department of corrections may not attend
22 a civil proceeding IN WHICH THE PERSON IS A PARTY unless ~~the person is:~~
23 (a) THE PERSON IS a respondent in a proceeding to terminate parental rights; or
24 (b) ~~a party to the civil proceeding and~~ the court determines that ~~the person~~ A PARTY will be
25 substantially and irreparably prejudiced by not attending the civil proceeding.
26 (2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the
27 department of corrections to attend a court proceeding without first:
28 (a) notifying the department and allowing the department 15 days to file a written objection; and
29 (b) if requested, granting the department an opportunity to appear and present evidence that the
30 person's attendance at the proceeding represents a security risk.

(3) A person who requests that a person in the legal custody of the department of corrections attend a civil proceeding shall pay all costs associated with security.

NEW SECTION. Section 2. Report by supervising authority required. (1) ~~Subsequent to any judgment awarding money damages to~~ IF a prisoner under the legal custody of the department of corrections BECOMES ENTITLED TO RECEIVE MONEY FROM ANY SOURCE, the prisoner's supervising authority shall, ~~upon request of the court, submit~~ PREPARE a report identifying:

(a) the total costs incurred by the state or county during the prisoner's incarceration;

(b) the criminal sentences imposed upon the prisoner, including:

(i) the amount of restitution, if any, ordered in each sentence;

(ii) the name and current address of each victim or other person to whom restitution is owed;

(iii) the amount of restitution paid by the incarcerated person; and

(iv) the amount of restitution currently owed by the incarcerated person for each sentence;

(C) THE AMOUNT OF ANY CHILD SUPPORT OWED BY THE PRISONER.

(2) The SUPERVISING AUTHORITY SHALL SUBMIT THE REPORT ALONG WITH A PETITION FOR GARNISHMENT TO THE COURT THAT SENTENCED THE PRISONER. THE COURT MAY ORDER GARNISHMENT OF THE PRISONER'S MONEY FOR THE PAYMENT OF RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF INCARCERATION OWED BY THE PRISONER. UPON RECEIPT OF THE PETITION, THE court shall provide a copy of the report to the prisoner, who has 15 days following receipt to file an objection. The court may hold a hearing to consider objections raised by the prisoner.

(3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the amount of restitution, CHILD SUPPORT, and repayment for per diem costs owed by the prisoner. The court shall ~~issue an order,~~ UP TO THE AMOUNT OF MONEY AVAILABLE,

~~(a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution,~~
CHILD SUPPORT, and repayment costs; and

~~(b) ordering the party owing money damages to the prisoner to pay~~ PAYMENT OF an amount equal to the restitution owed by the prisoner to the ~~crime victims compensation and assistance account established in 53-9-109,~~ TO PAY PERSON DESIGNATED UNDER 46-18-245 TO SUPERVISE THE MAKING OF RESTITUTION PAYMENTS, ANY OUTSTANDING CHILD SUPPORT PAYMENTS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR DISBURSEMENT TO THE OBLIGEE, and to pay per diem

1 costs owed by the prisoner. All restitution ~~owned~~ OWED by the prisoner must be paid prior to payment
2 of any CHILD SUPPORT PAYMENTS. ALL CHILD SUPPORT OWED BY THE PRISONER MUST BE PAID
3 PRIOR TO THE PAYMENT OF ANY per diem costs.

4
5 **Section 3.** Section 25-10-404, MCA, is amended to read:

6 **"25-10-404. Poor persons not required to prepay fees -- definition.** (1) Except as provided in
7 ~~subsection~~ subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported
8 by a financial statement, stating that the person has a good cause of action or defense and is unable to pay
9 the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~
10 subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a
11 request for waiver of fees, the person may commence and prosecute or defend an action in any of the
12 courts and administrative tribunals of this state and the officers of the courts and administrative tribunals
13 shall issue and serve all writs and perform all services in the action without demanding or receiving their
14 fees in advance.

15 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request
16 for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval.
17 If the request is subsequently denied, the fees must be paid before the case may proceed further.

18 (3) A person represented by an entity that provides free legal services to indigent persons is not
19 required to file the financial statement required by subsection (1).

20 (4) The department of justice shall, by rule, prescribe the form of the financial statement required
21 by subsection (1) for use in determining indigence. The form may require the disclosure of income and
22 assets, including but not limited to the ownership of real and personal property, cash, and savings.

23 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals
24 a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition
25 to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account
26 statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately
27 preceding any filing.

28 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil
29 complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a
30 prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of

1 any fees required by law when funds exist. The court shall consider the indigence policy of the department
2 when determining whether funds exist.

3 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or
4 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall
5 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by
6 the court.

7 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or
8 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial
9 release, or a diversionary program and who is subject to incarceration, detention, or admission to any
10 facility."

11
12 **Section 4.** ~~Section 37-1-308, MCA, is amended to read:~~

13 ~~"37-1-308. Unprofessional conduct — complaint — investigation — immunity — exception. (1) A~~
14 ~~person, government, or private entity may submit a written complaint to the department charging a licensee~~
15 ~~or license applicant with a violation of this part and specifying the grounds for the complaint.~~

16 ~~(2) If the department receives a written complaint or otherwise obtains information that a licensee~~
17 ~~or license applicant may have committed a violation of this part, the department may, with the concurrence~~
18 ~~of a member of the screening panel established in 37-1-307, investigate to determine whether there is~~
19 ~~reasonable cause to believe that the licensee or license applicant has committed the violation. A person or~~
20 ~~private entity, but not a government entity, filing a complaint under this section in good faith is immune~~
21 ~~from suit in a civil action related to the filing or contents of the complaint.~~

22 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~
23 ~~A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."~~

24
25 **Section 5.** ~~Section 49-2-501, MCA, is amended to read:~~

26 ~~"49-2-501. Filing complaints — exception. (1) A complaint may be filed by or on behalf of any~~
27 ~~person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint~~
28 ~~must be in the form of a written, verified complaint stating the name and address of the person, and the,~~
29 ~~educational institution, financial institution, or governmental entity or agency alleged to have engaged in~~
30 ~~the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff~~

1 ~~may file a complaint in like manner when a discriminatory practice comes to its attention.~~

2 ~~(2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this~~
3 ~~chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory~~
4 ~~practice occurred or was discovered.~~

5 ~~(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing~~
6 ~~a grievance in accordance with any grievance procedure established by a collective bargaining agreement,~~
7 ~~contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the~~
8 ~~grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful~~
9 ~~discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within~~
10 ~~120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice~~
11 ~~occurred or was discovered.~~

12 ~~(c) Any complaint not filed within the times set forth herein in this subsection (2) may not be~~
13 ~~considered by the commission.~~

14 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~
15 ~~A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE.~~

16
17 ~~Section 6. Section 53-9-109, MCA, is amended to read:~~

18 ~~"53-9-109. Crime victims compensation and assistance account. (1) There is a crime victims~~
19 ~~compensation and assistance account in the state special revenue fund. There must be paid into this~~
20 ~~account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses~~
21 ~~involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result~~
22 ~~of citations or tickets issued by the highway patrol. Except as provided in subsection subsections (2) and~~
23 ~~(3), the money in the account must be used solely for the purposes of this part and for victims' assistance~~
24 ~~program coordination and planning provided by the division.~~

25 ~~(2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever~~
26 ~~the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000~~
27 ~~must be deposited in the general fund. (See compiler's comments for contingent termination of certain~~
28 ~~text.)~~

29 ~~(3) Funds deposited into the account pursuant to [section 2] must be distributed to a victim or~~
30 ~~person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified~~

~~victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person.
If a qualified victim or person cannot be located, that victim's or person's share of restitution must be
retained in the account."~~

NEW SECTION. Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to [sections 1].

(2) [Section 2] is intended to be codified as an integral part of Title 25, chapter 10, and the provisions of Title 25, chapter 10, apply to [section 2].

NEW SECTION. SECTION 5. SEVERABILITY. ~~IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.~~

~~**NEW SECTION. SECTION 8. RETROACTIVE APPLICABILITY.** [SECTIONS 2, 4, AND 5] APPLY RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO CAUSES OF ACTION THAT ACCRUED AND JUDGMENTS THAT OCCURRED AFTER JANUARY 1, 1990.~~

NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

-END-



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

April 8, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena, MT 59620

Mr. President:

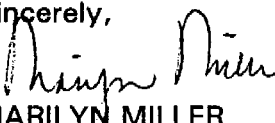
I am directed by the House of Representatives to inform the Senate that the House, on April 8, 1997, failed to concur with the Senate amendments to House Bill 122, and by motion, the Speaker was authorized to appoint a Conference Committee.

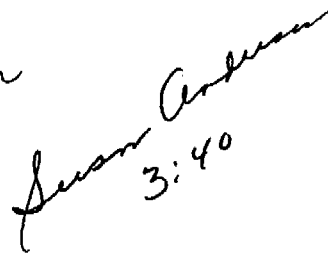
The Speaker appointed the following members:

Representative Smith, Chairman
Representative Ahner
Representative McCulloch

The House requests that the Senate appoint a like committee to confer on House Bill 122.

Sincerely,


MARILYN MILLER
Chief Clerk


3:40

tnsa



MONTANA STATE SENATE

April 9, 1997

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, MT 59620

Mr. Speaker:

I am directed by the Senate to inform the House of Representatives that the Senate on this day, April 9, 1997, acceded to the request of the House and authorized the President to appoint a Conference Committee to meet with a like committee of the House on House Bill No. 122.

The President appointed the following members:

Senator Lorents Grosfield, Chair
Senator Walter McNutt
Senator Sue Bartlett

Respectfully,

Rosana Skelton

ROSANA SKELTON
Secretary of the Senate

RS/JF

*Smith
Ahner
McCulloch*

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 122

Call to Order: By SENATOR LORENTS GROSFIELD, on April 14, 1997,
at 10:00 A.M., April 16, 1997, at 9:00 A.M., April 17, 1997,
at 8:00 A.M. in Room 317.

ROLL CALL

Members Present:

Sen. Lorents Grosfield (R), Chairman
Rep. Liz Smith (R)
Rep. Chris Ahner (R)
Rep. Linda McCulloch (D)
Sen. Walter L. McNutt (R)
Sen. Sue Bartlett (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Services Division
Alberta Strachan, Committee Secretary

CHAIRMAN GROSFIELD opened the discussion.
{Tape: 1; Side: 1; Approx. Time Count: .3.}

Discussion:
{Tape: 1; Side: 1; Approx. Time Count: 2.0; through Tape: 2; Side
2; Approx. Time Count: 28.7.}

Motion/Vote: REP. AHNER moved to make a recommendation to the
Speaker of the House of Representatives and the President of the
Senate to dissolve this Conference Committee and re-appoint the
same members which comprise this committee to a Free Conference
Committee. Motion carried unanimously.
{Tape: 2; Side: 2; Approx. Time Count: 28-8.}

CHAIRMAN GROSFIELD stated the meeting will reconvene on April 16,
1997.
{Tape: 2; Side: 2; Approx. Time Count: 29.}

CHAIRMAN GROSFIELD requested Ms. Lane to explain the new
amendments.
{Tape: 3; Side: 1; Approx. Time Count: .1.}

Discussion:

{Tape: 3; Side: 1; Approx. Time Count: .5.}

Motion/Vote: REP. AHNER moved to adopt the new Ahner amendments.
Motion carried unanimously.

{Tape: 3; Side: 1; Approx. Time Count: .2.}

Discussion: Discussion followed on Section 2 of the bill.

{Tape: 3; Side: 1; Approx. Time Count: 18.7.}

CHAIRMAN GROSFIELD stated the meeting will reconvene on April 17, 1997.

{Tape: 3; Side: 1; Approx. Time Count: 25.0.}

CHAIRMAN GROSFIELD opened the meeting.

{Tape: 4; Side: 1; Approx. Time Count: .1.}

Discussion:

{Tape: 4; Side: 1; Approx. Time Count: 1.2.}

Motion/Vote: REP. SMITH moved to delete ", which may take" and replace with "for" on page 6, following line 3, Section 4, (3).
Motion carried unanimously.

{Tape: 4; Side: 1; Approx. Time Count: 10.6.}

Discussion:

{Tape: 4; Side: 1; Approx. Time Count: 12.0.}

Motion/Vote: REP. MCCULLOCH moved to change the codification in Section 1, Title 25, Chapter 1 to Section 1, Title 25, Chapter 10 on Page 6, Line 6. Motion carried unanimously.

{Tape: 5; Side: 1; Approx. Time Count: .4.}

Discussion:

{Tape: 5; Side: 1; Approx. Time Count: 5.1.}

Motion/Vote: REP. SMITH moved to adopt amendments 3 and 4 as they appear and not adopting amendments 1 and 2 as they appear but revising them. Motion carried unanimously.

{Tape: 5; Side: 1; Approx. Time Count: 24.3.}

Motion/Vote: REP. MCCULLOCH moved to change the word incarcerated person to prisoner on Page 2, lines 12 and 13.
Motion carried unanimously.

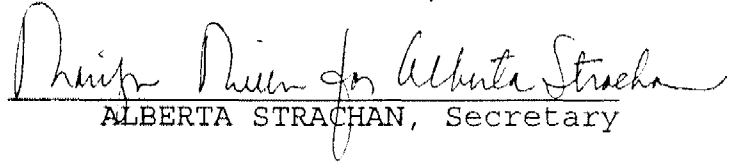
{Tape: 5; Side: 1; Approx. Time Count: 27.1.}

ADJOURNMENT

Adjournment: 9:30 A.M.



SEN. LORENTS GROSFIELD, CHAIRMAN



ALBERTA STRACHAN, Secretary

LG/ajs

CONFERENCE COMMITTEE

HB 122

ROLL CALL

DATE: 4-14-97

NAME		
Rep. Liz Smith	X	
Rep. Chris Ahner	X	
Rep. Linda McCulloch	X	
Sen. Lorents Grosfield - <i>CHAIRMAN</i>	X	
Sen. Walter McNutt	X	
Sen. Sue Bartlett	X	



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

April 14, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena, MT 59620

Mr. President:

I am directed by the House of Representatives to inform the Senate that the House on April 14, 1997, by motion, dissolved the Conference Committee on Senate Amendments to House Bill No. 122, "REQUIRE PAYMENT OF FILING FEES PRIOR TO CIVIL ACTION BY PRISONERS", and the Speaker was authorized to appoint a Free Conference Committee.

The Speaker appointed the following members;

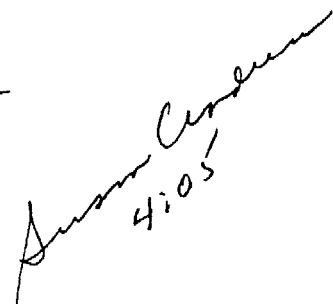
Representative Liz Smith, Chair
Representative Ahner
Representative McCulloch

The House requests that the Senate appoint a like committee to confer on House Bill No. 122.

Sincerely,


MARILYN MILLER
Chief Clerk

trccafcc


4:05



MONTANA STATE SENATE

April 15, 1997

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, MT 59620

Mr. Speaker:

I am directed by the Senate to inform the House of Representatives that the Senate this day, April 15, 1997, by motion, acceded to the request of the House and dissolved the Conference Committee on Senate Amendments to House Bill No. 122, and the President was authorized to appoint a Free Conference Committee.

The President appointed the following members:

Senator Lorents Grosfield, Chairman
Senator Walt McNutt
Senator Sue Bartlett

Respectfully,

ROSANA SKELTON
Secretary of the Senate

RS/jf



MONTANA STATE SENATE

April 15, 1997

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, MT 59620

Mr. Speaker:

I am directed by the Senate to inform the House of Representatives that the Senate on this day, April 15, 1997, acceded to the request of the House and authorized the President to appoint a Free Conference Committee to meet with a like committee of the House on House Bill No. 122.

The President appointed the following members:

Senator Lorents Grosfield, Chair
Senator Walt McNutt
Senator Sue Bartlett

Respectfully,

A handwritten signature in cursive script that reads "Rosana Skelton".

ROSANA SKELTON
Secretary of the Senate

RS/jf



FREE CONFERENCE COMMITTEE

on House Bill 122

Report No. 1, April 17, 1997

Page 1 of 3

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 122** (reference copy -- salmon) and recommend that **House Bill 122** be amended as follows:

1. Title.

Following: line 12

Insert: "PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE
DEPARTMENT OF COMMERCE AGAINST CERTAIN PROFESSIONALS;"

2. Title, line 14.

Strike: "SECTION"

Insert: "SECTIONS"

3. Title, line 15.

Following: "25-10-404"

Insert: "AND 37-1-308"

4. Page 2, line 4.

Strike: "**Report**"

Insert: "Garnishment -- report"

Following: "**authority**"

Strike: "**required**"

5. Page 2, line 5.

Following: "IF"

Insert: "the department of corrections becomes aware that"

Following: "prisoner"

Insert: "while incarcerated"

6. Page 2, line 6.

Strike: "BECOMES"

Insert: "is"

ADOPT

AC HB 122-1

REJECT

821120CC.Hgd

7. Page 2, line 7.
Strike: "shall"
Following: "submit"
Insert: "may"

8. Page 2, line 12.
Page 2, line 13.
Strike: "incarcerated person"
Insert: "prisoner"

9. Page 2, line 15.
Following: "SHALL"
Insert: "provide notice and a copy of the report to the board of
crime control and the county attorney for the county in
which the prisoner was sentenced, either of whom may"

10. Page 6.
Following: line 3
Insert: "Section 4. Section 37-1-308, MCA, is amended to read:
"37-1-308. Unprofessional conduct -- complaint --
investigation -- immunity -- exception. (1) A Except as provided
in subsection (3), a person, government, or private entity may
submit a written complaint to the department charging a licensee
or license applicant with a violation of this part and specifying
the grounds for the complaint.

(2) If the department receives a written complaint or
otherwise obtains information that a licensee or license
applicant may have committed a violation of this part, the
department may, with the concurrence of a member of the screening
panel established in 37-1-307, investigate to determine whether
there is reasonable cause to believe that the licensee or license
applicant has committed the violation. A person or private
entity, but not a government entity, filing a complaint under
this section in good faith is immune from suit in a civil action
related to the filing or contents of the complaint.

(3) A person may not file a complaint under subsection (1)
against a licensed or certified provider of health care or
rehabilitative services for services that were provided to the
person while incarcerated under the legal custody of the
department of corrections. If the department of corrections has
reason to believe that there has been a violation of this part
arising out of health care or rehabilitative services provided to
a person incarcerated under the legal custody of the department
of corrections, the department of corrections shall report the
possible violation to the department for appropriate action under
subsection (2)."

Renumber: subsequent sections

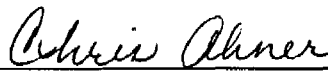
11. Page 6, line 6.
Following: "chapter" in two places
Strike: "1, part 1"
Insert: "10"

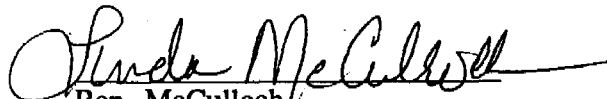
12. Page 6, lines 8 and 9.
Strike: "Title 25, chapter 10"
Insert: "Title 46, chapter 18"

And this FREE Conference Committee report be adopted.

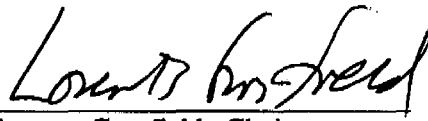
For the House:


Rep. Smith, Chair

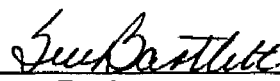

Rep. Ahner


Rep. McCulloch

For the Senate:


Senator Grosfield, Chair


Senator McNutt


Senator Bartlett



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

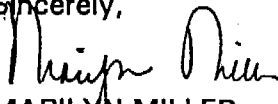
April 19, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena, MT 59620

Mr. President:

I am directed by the House of Representatives to inform the Senate that Free Conference Committee Report No. 1 on Senate Amendments to House Bill 122, "REQUIRE PAYMENT OF FILING FEES PRIOR TO CIVIL ACTION BY PRISONERS", was adopted on April 19, 1997, on Third reading by the House.

Sincerely,


MARILYN MILLER
Chief Clerk

tccado

HOUSE BILL NO. 122

INTRODUCED BY MCGEE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT; PROVIDING THAT ~~AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS~~ BE SUBJECT TO GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF IMPRISONMENT; ~~PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION;~~ PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST CERTAIN PROFESSIONALS; CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; ~~AND AMENDING SECTIONS SECTION SECTIONS 25-10-404 AND 37-1-308, 37-1-308, 49-2-501, AND 53-9-109, MCA;~~ AND PROVIDING A RETROACTIVE APPLICABILITY AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions -- costs. (1) A person incarcerated in a correctional facility of the department of corrections may not attend a civil proceeding IN WHICH THE PERSON IS A PARTY unless ~~the person is:~~

(a) THE PERSON IS a respondent in a proceeding to terminate parental rights; or

(b) ~~a party to the civil proceeding and~~ the court determines that ~~the person~~ A PARTY will be substantially and irreparably prejudiced by not attending the civil proceeding.

(2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the department of corrections to attend a court proceeding without first:

(a) notifying the department and allowing the department 15 days to file a written objection; and

(b) if requested, granting the department an opportunity to appear and present evidence that the

person's attendance at the proceeding represents a security risk.

(3) A person who requests that a person in the legal custody of the department of corrections attend a civil proceeding shall pay all costs associated with security.

NEW SECTION. Section 2. ~~Report~~ GARNISHMENT -- REPORT by supervising authority required.

(1) ~~Subsequent to any judgment awarding money damages to~~ IF THE DEPARTMENT OF CORRECTIONS BECOMES AWARE THAT a prisoner WHILE INCARCERATED under the legal custody of the department of corrections ~~BECOMES IS ENTITLED TO RECEIVE MONEY FROM ANY SOURCE~~, the prisoner's supervising authority ~~shall, upon request of the court, submit~~ MAY PREPARE a report identifying:

- (a) the total costs incurred by the state or county during the prisoner's incarceration;
- (b) the criminal sentences imposed upon the prisoner, including:
 - (i) the amount of restitution, if any, ordered in each sentence;
 - (ii) the name and current address of each victim or other person to whom restitution is owed;
 - (iii) the amount of restitution paid by the ~~incarcerated person~~ PRISONER; and
 - (iv) the amount of restitution currently owed by the ~~incarcerated person~~ PRISONER for each sentence;

(C) THE AMOUNT OF ANY CHILD SUPPORT OWED BY THE PRISONER.

(2) The SUPERVISING AUTHORITY SHALL PROVIDE NOTICE AND A COPY OF THE REPORT TO THE BOARD OF CRIME CONTROL AND THE COUNTY ATTORNEY FOR THE COUNTY IN WHICH THE PRISONER WAS SENTENCED, EITHER OF WHOM MAY SUBMIT THE REPORT ALONG WITH A PETITION FOR GARNISHMENT TO THE COURT THAT SENTENCED THE PRISONER. THE COURT MAY ORDER GARNISHMENT OF THE PRISONER'S MONEY FOR THE PAYMENT OF RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF INCARCERATION OWED BY THE PRISONER. UPON RECEIPT OF THE PETITION, THE court shall provide a copy of the report to the prisoner, who has 15 days following receipt to file an objection. The court may hold a hearing to consider objections raised by the prisoner.

(3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the amount of restitution, CHILD SUPPORT, and repayment for per diem costs owed by the prisoner. The court shall ~~issue an order,~~ UP TO THE AMOUNT OF MONEY AVAILABLE,

~~(a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution,~~
CHILD SUPPORT, and repayment costs; and

1 ~~(b) ordering the party owing money damages to the prisoner to pay~~ PAYMENT OF an amount equal
2 to the restitution owed by the prisoner to the ~~crime victims compensation and assistance account~~
3 ~~established in 53-9-109, TO PAY PERSON DESIGNATED UNDER 46-18-245 TO SUPERVISE THE MAKING~~
4 OF RESTITUTION PAYMENTS, ANY OUTSTANDING CHILD SUPPORT PAYMENTS TO THE DEPARTMENT
5 OF PUBLIC HEALTH AND HUMAN SERVICES FOR DISBURSEMENT TO THE OBLIGEE, and to pay per diem
6 costs owed by the prisoner. All restitution ~~owed~~ OWED by the prisoner must be paid prior to payment
7 of any CHILD SUPPORT PAYMENTS. ALL CHILD SUPPORT OWED BY THE PRISONER MUST BE PAID
8 PRIOR TO THE PAYMENT OF ANY per diem costs.

9
10 **Section 3.** Section 25-10-404, MCA, is amended to read:

11 **"25-10-404. Poor persons not required to prepay fees -- definition.** (1) Except as provided in
12 ~~subsection~~ subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported
13 by a financial statement, stating that the person has a good cause of action or defense and is unable to pay
14 the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~
15 subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a
16 request for waiver of fees, the person may commence and prosecute or defend an action in any of the
17 courts and administrative tribunals of this state and the officers of the courts and administrative tribunals
18 shall issue and serve all writs and perform all services in the action without demanding or receiving their
19 fees in advance.

20 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request
21 for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval.
22 If the request is subsequently denied, the fees must be paid before the case may proceed further.

23 (3) A person represented by an entity that provides free legal services to indigent persons is not
24 required to file the financial statement required by subsection (1).

25 (4) The department of justice shall, by rule, prescribe the form of the financial statement required
26 by subsection (1) for use in determining indigence. The form may require the disclosure of income and
27 assets, including but not limited to the ownership of real and personal property, cash, and savings.

28 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals
29 a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition
30 to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account

1 statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately
2 preceding any filing.

3 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil
4 complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a
5 prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of
6 any fees required by law when funds exist. The court shall consider the indigence policy of the department
7 when determining whether funds exist.

8 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or
9 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall
10 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by
11 the court.

12 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or
13 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial
14 release, or a diversionary program and who is subject to incarceration, detention, or admission to any
15 facility."

16
17 **~~Section 4. Section 37-1-308, MCA, is amended to read:~~**

18 **~~"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception. (1) A~~**
19 **~~person, government, or private entity may submit a written complaint to the department charging a licensee~~**
20 **~~or license applicant with a violation of this part and specifying the grounds for the complaint.~~**

21 **~~(2) If the department receives a written complaint or otherwise obtains information that a licensee~~**
22 **~~or license applicant may have committed a violation of this part, the department may, with the concurrence~~**
23 **~~of a member of the screening panel established in 37-1-307, investigate to determine whether there is~~**
24 **~~reasonable cause to believe that the licensee or license applicant has committed the violation. A person or~~**
25 **~~private entity, but not a government entity, filing a complaint under this section in good faith is immune~~**
26 **~~from suit in a civil action related to the filing or contents of the complaint.~~**

27 **~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~**
28 **~~A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."~~**

29
30 **~~Section 5. Section 49-2-501, MCA, is amended to read:~~**

~~"49-2-501. Filing complaints exception. (1) A complaint may be filed by or on behalf of any~~

~~person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, and the educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.~~

~~(2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.~~

~~(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.~~

~~(c) Any complaint not filed within the times set forth herein in this subsection (2) may not be considered by the commission.~~

~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."~~

~~Section 6. Section 53-9-109, MCA, is amended to read:~~

~~"53-9-109. Crime victims compensation and assistance account. (1) There is a crime victims compensation and assistance account in the state special revenue fund. There must be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. Except as provided in subsections (2) and (3), the money in the account must be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the division.~~

~~(2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever~~

1 the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000
2 must be deposited in the general fund. (See compiler's comments for contingent termination of certain
3 text.)

4 ~~(3) Funds deposited into the account pursuant to [section 2] must be distributed to a victim or~~
5 ~~person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified~~
6 ~~victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person.~~
7 ~~If a qualified victim or person cannot be located, that victim's or person's share of restitution must be~~
8 ~~retained in the account."~~

9
10 **SECTION 4. SECTION 37-1-308, MCA, IS AMENDED TO READ:**

11 **"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception. (1) A**
12 **Except as provided in subsection (3), a person, government, or private entity may submit a written**
13 **complaint to the department charging a licensee or license applicant with a violation of this part and**
14 **specifying the grounds for the complaint.**

15 (2) If the department receives a written complaint or otherwise obtains information that a licensee
16 or license applicant may have committed a violation of this part, the department may, with the concurrence
17 of a member of the screening panel established in 37-1-307, investigate to determine whether there is
18 reasonable cause to believe that the licensee or license applicant has committed the violation. A person or
19 private entity, but not a government entity, filing a complaint under this section in good faith is immune
20 from suit in a civil action related to the filing or contents of the complaint.

21 **(3) A person may not file a complaint under subsection (1) against a licensed or certified provider**
22 **of health care or rehabilitative services for services that were provided to the person while incarcerated**
23 **under the legal custody of the department of corrections. If the department of corrections has reason to**
24 **believe that there has been a violation of this part arising out of health care or rehabilitative services**
25 **provided to a person incarcerated under the legal custody of the department of corrections, the department**
26 **of corrections shall report the possible violation to the department for appropriate action under subsection**
27 **(2)."**

28
29 **NEW SECTION. Section 5. Codification instruction. (1) [Section 1] is intended to be codified as**
30 **an integral part of Title 25, chapter 1, part 1 10, and the provisions of Title 25, chapter 1, part 1 10, apply**

1 to [section 1].

2 (2) [Section 2] is intended to be codified as an integral part of ~~Title 25, chapter 10~~ TITLE 46,
3 CHAPTER 18, and the provisions of ~~Title 25, chapter 10~~ TITLE 46, CHAPTER 18, apply to [section 2].

4
5 NEW SECTION. SECTION 6. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
6 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
7 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
8 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

9
10 NEW SECTION. SECTION 9. RETROACTIVE APPLICABILITY. [SECTIONS 2, 4, AND 5] APPLY
11 RETROACTIVELY, WITHIN THE MEANING OF 1-2-108, TO CAUSES OF ACTION THAT ACCRUED AND
12 JUDGMENTS THAT OCCURRED AFTER JANUARY 1, 1990.

13
14 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND
15 APPROVAL.

16 -END-